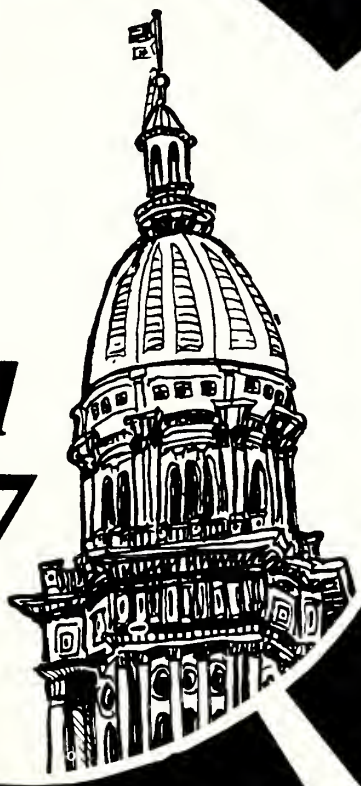
$3.25

Illinois Issues Annual 1976-77



Edited by Caroline A. Gherardini
Sangamon State University
Springfield, Illinois

Illinois Issues Annual 1976-77

Edited by Caroline A. Gherardini
Contributing editors: William L. Day
Leon S. Cohen

Acknowledgements
For their assistance in selecting articles for this Annual, Illinois Issues *wishes to thank the Illinois Legislative Studies Center at Sangamon State University and those individuals who took the time to recommend articles: Sam Gove, director, Institute of Government and Public Affairs, University of Illinois, Urbana; Ann M. Pictor, educational consultant, Social Studies Program Planning and Development, Illinois Office of Education; Al Popowits, East Leyden High School, Franklin Park; Sharon Z. Alter, assistant professor, Division of Social Science and Public Service, William Rainey Harper College, Palatine; George Perry, faculty of political science, Lincoln Land Community College, Springfield; and Robert A. Bunnell, associate professor of administration, Sangamon State University.*

Sangamon State University
Springfield, Illinois
August 1977

The ABC's of Illinois government

ONE outstanding characteristic of government in Illinois is the sharing of political or governmental power among many different agencies and units of government. On the state level, power is shared among the legislative, executive and judicial branches. On the local level, it is shared among more than 6,000 different units of government — municipalities, counties, townships, school districts and a variety of special district governments which provide special services such as parks, sanitation, transit and fire protection. *(See box: Local governments in Illinois.)*

Many of the officers of these governments are elected by the people. This is true for the state officers and legislators, and it is also true for the judges. It is the case, too, for a variety of local officers — mayors and council members, village presidents and trustees, school board members and officers of many special districts.

Another important characteristic of Illinois government is a strong two-party system which prevents dominance by one political party. While the Democrat party has dominated the politics of Chicago for half a century *(See "The death of Chicago's first all-powerful boss," page 64.),* control of the state government has alternated fairly regularly between the two parties.

"Checks and balances"

Sharing of power in Illinois also refers to the system of "checks and balances." This system is based on the idea that government can become tyrannical if unchecked, and the best safeguard is to divide government power widely so that no one branch of government can make decisions without being checked by another branch. Examples of checks are the governor's power to veto bills passed by the legislature and the power of the courts to declare bills unconstitutional.

The federal government is thought to have expanded its powers enormously in recent years at the expense of the states. Without going into this complex issue, the fact remains that the states still can and do exercise many powers of vital importance to the average citizen. Moreover, the citizen looks to local governments for education, police and fire protection, sanitation, highways and transit plus other vital public services.

An uneasy partnership

State and local governments would have difficulty functioning without the large amounts of aid received from the federal government. Many feel, however, that Illinois is not getting its share of federal dollars. Others argue that federal conditions that accompany grants stifle state initiative. But sometimes the federal government goes too far, as it did in extending wage and hour law provisions to employees of state and local governments, an action which was held unconstitutional by the U.S. Supreme Court. The partnership is sometimes an uneasy one.

At the top of the heap

The governor is the chief executive officer of the state, and more power is concentrated in him than any other individual. The legislature — called the General Assembly — is the lawmaking authority and can exercise any power not denied to it by the Illinois or U.S. Constitutions. Consequently, anyone who wishes to be well informed about legislative powers should read both constitutions (available without charge from the Illinois Office of Secretary of State in Springfield).

The General Assembly consists of two chambers — a Senate of 59 members and a House of Representatives with 177 members. The state is divided into 59 legislative districts, but boundaries change every 10 years following the federal census which provides population data to reapportion districts according to the one man-one vote doctrine. One senator and three representatives are elected from each district. Representatives serve terms of two years. Senate terms vary. Each district elects a senator for one two-year term and two four-year terms during a decade. Thus at the end of 10 years, following redistricting, all Senate seats are up for election. The senators' terms are staggered so that some, but not all, are up for election every two years until the end of a decade when they are again all up for election.

Representatives are elected by an unusual system of proportional representation referred to as "cumulative voting." Three representatives are elected from each district, and the voter may cast all three of his votes for one candidate or give two candidates one and one-half votes each or he can give three candidates one vote each. The system is unique among state legislatures and efforts have been made to get rid of it. *(See "Cumulative voting," page 24.)*

The legislature convenes on the second Wednesday in January each year for an annual session. In the odd-numbered year following a November general election, a new General Assembly begins; thus on January 12, 1977, the 80th General Assembly convened. The governor presides over the Senate until that body elects a president from its membership. In the House, the secretary of state presides until a speaker has been elected from the House membership. The party controlling the majority of seats in a chamber usually elects the presiding officer. The losing candidates in each chamber become the minority leaders for their respective parties. The Senate president, House speaker, and Senate and House minority leaders are collectively known as the legislative leaders.

Following selection of the leaders, committee chairmen and members are appointed, again along party lines and in numbers proportionate to party strength in each chamber. The primary purpose of committees is to consider bills in small groups and to hear those who wish to speak for or against a bill.

How the laws are made

Lawmaking, including the passage of appropriations, is the primary function of the General Assembly. It also has the power to investigate and oversee the operations of government and to remove executive and judicial officers (through impeachment by the House and trial by the Senate). And the consent of the Senate is required for many of the governor's appointments.

A law begins with somebody's idea, but only a member of the legislature or a legislative committee can introduce a bill. Legislative rules require that bills be reviewed by the Legislative Reference Bureau, a bill-drafting agency staffed by lawyers, but the bureau only assures that the bill is in proper legal form. For example, the Constitution directs that all bills begin with the phrase, "Be it enacted by the People of the State of Illinois, represented in the General Assembly." Without this language, termed the enacting clause, a bill cannot become law. A bill differs from a resolution, which is the parliamentary device used to propose an amendment to the Illinois Constitution, to ratify a proposed amendment to the U.S. Constitution or to express legislative sentiments on a question.

A bill does not become law until it has been passed, in the same form, by both chambers of the General Assembly. The ordinary requirement to pass a bill is the affirmative vote of a majority of the members elected to each chamber — 30 of the 59 senators, 89 of the 177 representatives. This is a "constitutional majority." A "simple majority" of those present and voting will suffice for some votes such as amending a bill before final passage or passing a resolution. A recorded roll call vote is required to pass a bill. This is not the case with other parliamentary actions, where sometimes a voice vote will settle a question. The fact that a record is made and printed in the legislative journals affords every citizen an opportunity to see how his or her legislators voted on a bill which became law. Bills which did not pass usually have no recorded vote.

Before a bill can be passed, the Constitution requires that

Local governments in Illinois

Counties	102
Municipalities	1267
Townships	1432
School districts	1177
Special districts	2407
	6385

Source: 1972 Census of Governments

The cycle of government

January	
2nd Monday	New state officers take office following a general election.
2nd Wednesday	Annual legislative session begins.
March	
1st Wednesday	Governor submits budget to legislature.
3rd Wednesday	Primary election in even-numbered years.
June 30th	Target date for end of spring legislative session.
July 1st	New fiscal year begins for state.
October (variable)	Usual month for beginning of fall session to act on vetoes.
November	
1st Tuesday after 1st Monday	General election in even-numbered years.

it be "read by title" on three different days in each house. This is a safeguard against hasty action. "First reading" gives notice of the introduction of a bill. It is then assigned to a committee which after giving public notice hears the sponsor of the bill and any proponents or opponents who wish to testify. The committee can recommend a bill for passage, sometimes after being amended, or it can take action that will lead to tabling the bill or postponing action so that the bill is dead or at least unlikely to become law.

Favorable committee action sets the stage for "second reading" of the bill when it can be amended on the floor of the chamber. Then the bill goes to "third reading," where it is ready for voting for passage. If it fails to obtain the constitutional majority, the bill's sponsor is allowed to postpone further consideration until he or she can round up sufficient votes to pass it or the sponsor can allow the bill to die. If the bill passed at the "third reading" stage, it goes to the other chamber of the General Assembly.

The process for bill action in the second house is similar to that in the house of origin. Each chamber has its own rules of procedure, however, and these differ in some details. If a bill passes the second house without any amendments, it is sent to the governor for his signature. But if the bill has been amended in the second house, further action is necessary to assure that the bill is agreed to in the same form by the two houses. This process can be summarized as follows:

1. The second house asks the house of origin to accept the amendments adopted in the second house. If the house of origin agrees, the bill is ready to go to the governor.

2. The house of origin may not agree to accept the amendments. It asks the second house to recede from the amendments. If the second house agrees, the bill can go to the governor.

3. But the second house may insist on retaining its amendments. In this case, a conference committee is usually appointed with an equal number of members from each house to work out a compromise. If the recommendations of the conference committee are accepted by both houses (by a record roll call vote), the bill goes to the governor in this final form. Sometimes a second conference committee is necessary. If agreement cannot be reached, the bill is dead or, at least, in limbo.

The legislative process in Illinois can be called "open." The sessions are open to the public and so are committee meetings unless closed by a two-thirds vote. There are also requirements for notice of hearings, etc., and legislative actions are well reported, by the press and in official documents. *(See "How to follow bills during the session," page 27.)* But because during the first year of a new General Assembly more than 5,000 bills will be introduced, it is difficult, if not impossible, to follow all legislation carefully.

The individual who exercises the most control over a bill is its chief sponsor. A bill may have several co-sponsors, but a bill does not "move" except at the request of the chief sponsor. The sponsor must ask for a committee hearing and must request the bill be called for amendment or passage. When a bill goes to the second house, the sponsor in the first house must find a sponsor for the bill in the second house. Often, this second sponsor will be a legislator from the same district as the original sponsor. If the sponsor is displeased with the way his or her bill was amended, the sponsor may table the bill even though it involves a matter of some importance.

The role of lobbyists

The passage of a significant bill through the two houses will involve many participants, both within and outside the legislature. Because of the complexity of the lawmaking process and the volume of bills, important public and private interests engage lobbyists to represent them in Springfield. Lobbyists watch for the introduction of bills that may affect the interest groups which employ them. Lobbyists will arrange for testimony before committees and, in general, will work to oppose or promote the passage of legislation, depending on the interests of their employers. (*See "How to lobby," page 22.*) More than 300 lobbyists are now registered with the Illinois secretary of state. Most lobbyists are ethical professionals who take pride in their reputations for integrity. But the use of money to influence legislation is not unknown. In the fall of 1976, several present or former legislators and a lobbyist were convicted of bribery in federal court. (*See "Cement Bribery Trial," page 10.)*

Constitutional officers and agencies in executive branch

Governor
Lieutenant Governor
Attorney General
Comptroller
Secretary of State
Treasurer
State Board of Education
State Board of Elections

Other legislative functions

The activity that goes on in the two chambers and in committee rooms during the session is only part of the legislative activity. The General Assembly has a large staff of assistants and clerks; it has created a number of service agencies and study commissions, some temporary, other permanent; and the Constitution has given the General Assembly a new officer, the auditor general, who is elected by the vote of three-fifths of the members elected to each house and whose duty is to audit the public funds of the state. These legislative agencies function all year to research proposed legislation, to make investigations and, in general, to provide legislators with the information and support they need to function effectively.

The governor as legislator

Bills passed by the General Assembly must go to the governor for his signature before they become law. The governor can help shape legislation by messages to the legislature and by the publicity given to his views, but his most important tool is the veto power. This power can be used to stop bills from becoming law, to change bills to a form which the governor favors, and — in the case of appropriation bills — to strike or reduce money items. In each type of veto action, the legislature can override the veto if a sufficient majority so desires. The vetoes available to the governor and possible legislative responses are as follows:

1. **A total veto.** The legislature can override with a recorded vote of three-fifths of the members elected in each chamber.
2. **Veto of appropriation item.** Same as a vetoed bill.
3. **Reduction veto of an amount in an appropriation item.** The legislature can restore the full amount by a recorded vote of a majority of the members elected in each chamber (constitutional majority).
4. **Amendatory or revisionary veto.** The governor returns the bill with recommendations for changes. If these recommendations are accepted by a constitutional majority in each chamber, the governor so certifies and the bill becomes law in the form the governor recommended. But the two houses can also override this veto with a recorded vote of three-fifths of the members elected in each chamber, thus rejecting the recommendations of the governor.

Legislative deadlines

The legislature traditionally seeks to wind up its business by June 30. It then recesses until a month in the fall when it returns to act on the governor's vetoes. There are at least two good reasons for aiming at June 30 as the final day of the spring session. First, the old fiscal year ends June 30 and the new year begins July 1, so that the appropriation bills for the functioning of the government should be signed into law by July 1. Second, the Constitution states that bills passed after June 30 do not become effective until July 1 of the next year unless passed by a vote of three-fifths of the members elected to each house.

In the second year of the General Assembly biennium, legislative activity is generally much less than in the first. With the primary election in March and the general election in November during the second year, all but essential legislative activities are put off until after the primary. Usually the two houses seek by rule to restrict second year sessions to budget, fiscal and emergency matters. (*See box: The cycle of government.*)

The 21 "Code" departments

Administrative Services
Aging
Agriculture
Business and Economic Development
Children and Family Services
Conservation
Corrections
Financial Institutions
Insurance
Labor
Law Enforcement
Local Government Affairs
Mental Health and Developmental Disabilities
Mines and Minerals
Personnel
Public Aid
Public Health
Registration and Education
Revenue
Transportation
Veterans Affairs

Executing the laws

The legislature can only enact laws; it cannot administer them. This is the role of the executive branch of state government. Again, power is shared — among six elected officers and two boards mandated in the Constitution (*See box: Constitutional officers and agencies in executive branch*). The six officers are elected statewide and serve four-year terms, except for those elected in November 1976 who are serving transitional two-year terms, expiring in 1979. In that year, the six offices will be filled by election (in November 1978) for four-year terms. The change was provided in the Constitution adopted in 1970 in order to shift the election of the state officers to a year midway between presidential elections with the hope that more attention would be focused on state government.

The governor exercises "the supreme executive power." He appoints subordinates — department directors, board members and other state officials — subject to the consent of the Senate. He can also remove his appointees, but not the other elected officials; he can only require information from them. He may grant pardons and can shorten sentences for offenses.

The lieutenant governor is elected jointly with the governor to assure that the governor and lieutenant governor are of the same political party. (In 1968 under the old Constitution, Paul Simon, a Democrat, was elected lieutenant governor when Richard B. Ogilvie, a Republican, was elected governor.) The lieutenant governor has no constitutional responsibility except to exercise powers that may be delegated to him by the governor or prescribed by law. In the case of the governor's death or disability, he assumes the governorship.

Other elected officers are attorney general, comptroller, treasurer and secretary of state. They exercise responsibilities of major importance in limited areas. Those of the opposite political party as the governor usually lead the opposition to the governor's programs, and, of course, those of the same political party as the governor usually support him.

According to the Constitution, the attorney general is the legal officer of the state. When a state agency goes into court or appears before a quasi-judicial board, such as the Pollution Control Board, only the attorney general can represent the agency. (*See "Attorney general vindicated," page 30.*) The state comptroller maintains the central fiscal records, and only he can order money into and out of the state treasury. Thus, the comptroller can hold up the payment of funds when he questions their legality — until he is advised otherwise by the attorney general or by a court. The position of comptroller was established by the 1970 Constitution. An additional check on state finances is provided by the office of state treasurer, who is custodian of the state's funds. The secretary of state is the official record keeper of the state and also state librarian. Acts of the legislature are filed with him, and after each session his office publishes the laws passed at that session. He administers the motor vehicle registration and driver licensing laws and charters corporations and regulates the issue of securities.

The State Board of Education and the State Board of Elections are provided for in the Constitution, but the legislature determines the method of selection and the composition. Both boards are appointed by the governor, although the original legislation for the Board of Elections was found unconstitutional by the Illinois Supreme Court, and the General Assembly was told by the Court to pass a new law in 1977. The State Board of Education appoints the state superintendent of education, a position which was an elected office under former Illinois constitutions.

How the governor governs

The governor's ability to function effectively as chief executive depends on how the executive branch is structured and on the leadership he shows in exercising his constitutional and statutory powers. The fact that he can remove any official whom he appoints gives him a great deal of control — so much that it is rare for a governor of Illinois to exercise this removal power. He also derives power from his constitutional authority to reorganize agencies and from the control he holds over the budgeting process.

The 21 departments created by the Civil Administrative Code are directly responsible to the governor. (*See box: The 21 "Code" departments.*) He appoints the principal officers or board members in many other agencies (*See box: Major non-departmental agencies*), but the extent of his control varies. It is limited in the case of multi-member boards and commissions whose members serve overlapping terms, but it is questionable whether a governor would want to interfere in the ordinary workings of such agencies as the Illinois Commerce Commission and the Pollution Control Board. There are also higher education agencies (*See box: Major higher education agencies),* one of which is popularly elected — the board of trustees of the University of Illinois. The others are appointed by the governor with the consent of the Senate.

The governor's reorganization power is limited to the agencies "directly responsible" to him and is subject to veto by either house of the General Assembly within 60 days after such a plan has been filed. This power was granted in the 1970 Constitution and was exercised for the first time in the spring of 1977 when Gov. James R. Thompson merged the Departments of Finance and General Services into a Department of Administrative Services under his Executive Order No. 1 and reorganized the Department of Law Enforcement under Executive Order No. 2. Although there was some legislative opposition to the second order, neither executive order was vetoed. Both Thompson and his Democratic opponent, Michael J. Howlett, pledged to streamline state government when they were candidates in 1976. A Task Force on Governmental Reorganization proposed an extensive reorganization immediately following Thompson's election in November 1976. (*See "Reorganizing executive agencies," page 31.*)

The budget

The governor's most effective management tool is the state budget, shaped for him by the Bureau of the Budget, whose director is one of the most influential figures in Illinois government. The Constitution directs the governor to prepare an annual budget and submit it to the General Assembly. Proposed expenditures, the Constitution says, are not to exceed funds estimated to be available during the year. By law, the deadline for budget submission is the first Wednesday in March for a fiscal year which begins four months later on July 1. (The budget is published by the state and provides a good explanatory text on Illinois government.)

In the legislature, the budget becomes a series of appropriation bills which are — or should be — introduced by the end of March in either the Senate or the House. Soon thereafter, hearings are begun in the appropriations committees. The budget in recent years has totaled $10 billion or more.

The appropriation bills carry funds not only for the operation of the state government and its programs, including state universities, but also for state aid to education for local school districts, state aid for various local projects, grants to local governments, highway construction — and more. With millions at stake to benefit their districts, legislators fight hard for what they see as their fair share, and sometimes disagreements are not resolved until the very end of a session on June

---

Major non-departmental agencies

Banks and Trust Companies Commissioner
Commerce Commission
Capital Development Board
Court of Claims
Environmental Protection Agency
Fair Employment Practices Commission
Historical Library
Industrial Commission
Institute for Environmental Quality
Liquor Control Commission
Military and Naval Department (Adjutant General)
Pollution Control Board
Racing Board
Savings and Loan Commissioner
State Fair Agency
State Tollway Authority
Vocational Rehabilitation Division

30 — or beyond.

The General Assembly is not bound to the governor's budget recommendations. It may reduce or increase items. The governor gets his chance to strike or reduce items when each bill is passed and sent to him, but he cannot increase amounts. In the fall session, the legislature deliberates on the governor's vetoes or reductions and may override them.

The courts of Illinois

The judicial system includes the Supreme Court, the Appellate Court and the circuit courts. Illinois has a "unified" court system. The circuit courts have general original jurisdiction over all justiciable matters. There are no justices of the peace, municipal or county courts, as there are in many other states. The Appellate Court hears appeals from the circuit courts and from administrative agencies as determined by the General Assembly. The Supreme Court hears appeals from the circuit courts or the Appellate Court as determined by Supreme Court rules. It also administers the entire court system through the Administrative Office of the Illinois Courts.

All judges in Illinois are elected. The state is divided into five judicial districts for the election of Supreme and Appellate Court judges. Cook County is one district, and the rest of the state is divided into four districts of approximately the same population. Three Supreme Court judges are elected from Cook County and one from each of the other districts. The state is also divided into 21 judicial circuits for the election of circuit court judges. Supreme and Appellate Court judges serve terms of ten years, and circuit judges have six-year terms. Election is initially by partisan ballot, but at the end of a judge's first term he may file for "retention" and be retained for another term, without party designation, with a favorable vote of three-fifths of those voting on his retention. Vacancies are filled by the Supreme Court until an election can be held.

The circuit court judges in each circuit elect one of their number as the chief judge for administrative purposes, and they appoint associate judges for terms of four years to hear small claims, traffic offenses and other matters. A circuit court clerk is elected in each county, appellate court clerks are appointed by the Appellate Court Judges in each district, and a Supreme Court clerk is appointed by that court.

The Judicial Inquiry Board consists of two circuit court judges appointed by the Supreme Court, and seven persons, three of whom are lawyers, appointed by the governor with the consent of the Senate. It receives complaints and makes investigations with respect to the conduct of judges. The board can then file a complaint with the Courts Commission, which consists of a Supreme Court judge, as chairman appointed by the Supreme Court, two Appellate Court judges appointed by that court, and two circuit court judges appointed by the Supreme Court. The commission can discipline a judge for misconduct to the extent of removing him from office.

Major higher education agencies

Board of Higher Education
Community College Board
Board of Governors of State Colleges and Universities
Board of Regents
Board of Trustees of Southern Illinois University
Board of Trustees of University of Illinois

By GARY DELSOHN

Hammering out a new Illinois law

Capital punishment

Reprinted from Illinois Issues, March 1977

'Few issues stir public passions and individual soul-searching as much as capital punishment.' In their rush to revive the death penalty, Illinois lawmakers are reacting to public opinion and facing limitations from the courts and a vocal opposition

GARY DELSOHN
A graduate student in the Public Affairs Reporting Program at Sangamon State University, Delsohn edited a weekly newspaper in Colorado, the *Del Norte Prospector,* after graduating from Southern Illinois University with a bachelor's degree in journalism.

THE LAST state execution in Illinois took place August 24, 1962 when cop killer James Duke was electrocuted in the basement of the Cook County Jail. The deep and abiding doubts about the morality of capital punishment can be seen in the recent statement of Warden Jack Johnson, the man who pulled the switch in Duke's electrocution. Johnson said "I had a definite feeling it was wrong. There was a feeling of guilt. But I rationalized it. I said, 'Okay, society, this is what you wanted and I gave it to you. It must be right.'"

Illinois Administrative Director of Courts Roy O. Gulley, a man who says he has "no real strong feelings about capital punishment either way," witnessed an execution when, as a young man fresh out of law school in 1951 he was chosen by the late Gov. Adlai E. Stevenson to be one of the six state witnesses required by law. "I stood there in complete terror, with my eyes closed," Gulley said. "I went away thinking it was unbelievably cruel." Opponents of capital punishment claim those in favor of it would feel differently if forced to witness the grisly spectacle of a human being convulsing in an electric chair as waves of electricity pulsed through the body, burning the life away. Rep. Anne Willer (D., LaGrange), realizing this reluctance to witness execution, offered an amendment to a proposed death penalty bill (House Bill 3204) which nearly passed during the closing moments of the veto session of the 79th General Assembly. Willer's amendment would have required state witnesses to executions to be drawn by lottery from the legislature. The amendment failed miserably.

Few issues stir public passions and individual soul-searching as much as capital punishment. Legislative debate and public hearings sometimes become forums for scriptural exhortations, libertarian denunciations, legal analyses and a variety of emotional outbursts. There is no doubt, however, that the public, like its lawmakers, is firmly in favor of the death penalty as the best way to deal with murderers. Yet, vocal opponents claim murder by the state is no less perverse or senseless than murder by individuals. With last summer's U.S. Supreme Court ruling *(Gregg* v. *Georgia)* upholding capital punishment within certain strict guidelines, Illinois, like the rest of the states, is rushing to revive the death penalty. The sensationally publicized case of Utah killer Gary Gilmore, illustrating that state's reluctance to carry out the ruling it imposed, brought the issue to the forefront of public attention. Yet, there are profound and persistent questions in the capital punishment debate that have gone unanswered for centuries as civilized societies have sought ways to protect themselves and punish criminals. Against this backdrop, it is only a matter of time before an Illinois governor signs the death penalty into law.

"The clamor is there," cried Rep. Roscoe Cunningham, (R., Lawrenceville), "for us to pass capital punishment. Public opinion is behind us on this. We are in a strong box." Cunningham's remarks, made during a hearing of the House Judiciary II Committee last session, underscore lawmakers' intentions to bring the death penalty back to Illinois. Our state's last capital punishment law was ruled unconstitutional by the Illinois Supreme Court in November 1975 in *People* v. *Cunningham* on the grounds that creation of a three-judge review panel called for in the law was an improper usurpation of the powers of the judicial branch of state government. By creating the "court," the legislature overstepped its authority, the Supreme Court ruled.

Although even the staunchest proponents admit they cannot empirically prove that capital punishment is a deterrent to murder, or that it accomplishes anything more than quenching society's thirst for revenge, Illinois lawmakers, with the support of their constituencies, are determined to pass a capital punishment measure. House Judiciary Chairman Harold Katz, (D., Glencoe), is fighting a losing battle when he says, "The clamor is not enough. If we react to clamor so will the judges." Although one might imagine the death penalty to be one issue where politics would defer to considerations of justice, deterrence, and morality, the fact that "the people of Illinois have spoken" is paramount, claims death bill sponsor Roman J. Kosinski (D., Chicago). In fact, Kosinski and others realize there is quite a bit of political stock to be gained in sponsoring and supporting death penalty legislation. "We got 67 co-sponsors on this thing without even trying," he said.

'There will be few executions; we all know that. But somebody's going to have to pay for murder with his life to set an example'

Kosinski was the primary sponsor and force behind a measure calling for restoration of capital punishment that passed the House during the veto session last fall. The bill passed by an overwhelming 122-45 vote in the House but stalled in the Senate when its Rules Committee refused to consider the bill on an emergency basis. For the 80th General Assembly, Kosinski has filed House Bill 10,* almost identical to his last effort. His primary co-sponsor on the failed bill was George E. Sangmeister (D., Mokena), now senator, who said he will introduce a companion bill in the Senate. Kosinski said, "We will be going at this thing from both sides next time. It will be my number one priority." Hardly anyone thinks such a measure will fail to be passed and signed by Gov. James Thompson this session.

Illinois' 'defendant oriented bill'

Kosinski's bills were modeled after the statute upheld July 2, 1976, in the U.S. Supreme Court's *Gregg* v. *Georgia* ruling. The statute calls for a mandatory death sentence for certain categories of murder, provided none of a list of mitigating circumstances are determined to have been present at the time of the offense. Because, as Kosinski has said, "Ours is a defendant-oriented bill," defendants can bypass traditional rules of evidence and introduce any information pertinent to consideration of the death sentence. H.B. 10 calls for death for murdering a policeman, fireman, judge or state's attorney who was on duty, personnel of the Department of Corrections, or persons inside correctional facilities with the knowledge of officials — this presumably would include visitors and hostages in prisoner uprisings. Also included are murders committed in the act of arson, rape, burglary, indecent liberties with a child and hijackings. Persons convicted of multiple murders would also be subject to execution, as would persons who murdered on "contract" and persons convicted of murder taking place in public places and endangering the lives of others.

To satisfy the U.S. Supreme Court's ruling in *Gregg* v. *Georgia,* the presence of one or more mitigating factors would preclude the death penalty. In its famous *Furman* v. *Georgia* decision of 1972, the Supreme Court invalidated all existing capital punishment statutes on grounds they were indiscriminate and failed to consider mitigating circumstances. Under Kosinski's bill it would be the defendant's responsibility to claim such circumstances and the burden of proof would be on the state to show, "beyond a reasonable doubt," that no such factors existed. The same standard of proof would apply to the state's responsibility to show the presence of one or more of the aggravating circumstances, that is, one or more of the types of murders listed above.

A defendant convicted of murder but spared, due to mitigating circumstances, would be sentenced to an indeterminate term of not less than 14 years in a state prison. The mitigating factors in Kosinski's bill that would void the death penalty are: (1) a defendant found to have no prior criminal background or record; (2) a defendant under age 18 at the time of the offense; (3) a defendant "under extreme mental or emotional disturbance," although not such as to constitute a defense to prosecution; (4) a defendant whose victim was a participant in the criminal act; (5) a defendant acting under threat of death or great bodily harm; and (6) a defendant not present at the commission of the murder, except in contract murders. Discussing the third situation of emotional disturbance, Sangmeister admitted in committee that "I don't like this, it will lead to all kinds of horrendous trials with psychiatrists, but we kept it in as a result of testimony we received in our subcommittee hearings."

A six-year moratorium on executions?

Any death penalty bill, in addition to the expected questions involving purpose and morality, falls prey to criticism for the seemingly arbitrary selection of aggravating and mitigating circumstances it includes, and opponents usually hammer away at these decisions in public hearings. Opponents of capital punishment say: "What makes the life of a policeman or fireman worth any more than the life of another individual? If we are asking for execution for murdering state's attorneys and judges, then what about the witnesses? They need protection at least as much." Rep. Robert E. Mann (D., Chicago) alluding to these questions, asked, "What is the rush to put the state back in the business of killing?" He suggested a six-year moratorium on executions until such time that these problems can be worked out. Proponents answer by pointing to the 15 years since the last Illinois execution and cite the tremendous amount of work and time that went into Kosinski's bill. Three public and well publicized subcommittee hearings last summer in

**H.B. 10 passed both houses and was signed into law by Gov. Thompson June 21, 1977.*

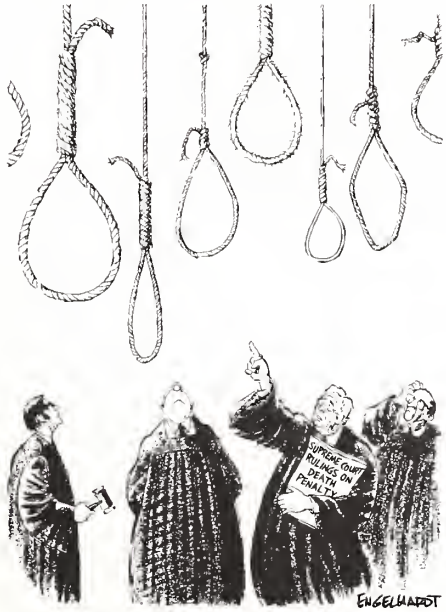
Wheaton, Joliet and Chicago produced reams of testimony, and supporters questioned the need to procrastinate any longer. A few days after the veto session ended, Mann said he would introduce a resolution this session calling for a joint committee "to produce a nonpolitical examination, which could hear persons from both sides of the issue, in a non-emotional, deliberative fashion." Regardless of the fate of Mann's proposal or eventual findings or recommendations of such a committee, he said, "The chances are very good that we are going to get a death penalty law very soon."

There are some alternatives to imposing a death penalty. Some opponents point to a recently released report by a Judiciary II Subcommittee on Adult Corrections, chaired by Rep. L. Michael Getty (D., Dolton). The subcommittee's recommendation for "flat-time," or determinate sentencing, would shift the emphasis of incarceration from the present idea of rehabilitation to punishment. (See *Illinois Issues* series on these proposals, Jan.-March, 1976). Although it would still be a goal of the corrections system to rehabilitate prisoners who wish to be, the subcommittee called the present system of varied sentences, "Capricious . . . an obstacle to rehabilitation . . . without significant results." The idea of mandatory life imprisonment for murder conviction is also discussed, although capital punishment advocates ask what will then prevent a prisoner "with nothing to lose" from killing guards or other inmates. Cedric Russell, a spokesman for the Illinois Coalition Against the Death Penalty, said lawmakers want the death penalty because they lack answers or solutions to the complex problems of crime in society. Russell told a Springfield press conference last November that the death penalty is discriminatory and implies not justice, but "just-us." One lawmaker who said he favors the death penalty voted against it and said, "It might lull people into believing that we're making things all right. It takes attention from the social problems that lead to murder."

Dual trial system for capital cases

The legislation that eventually becomes law will most likely employ a "bifurcated" or dual trial system, whereby one jury determines innocence or guilt and another convenes to consider the applicability of the death sentence. A unanimous recommendation of death would be necessary from the jury for the judge to sentence the defendant to death. The judge would review the entire proceeding and decide whether to honor the jury's recommendation. The House staff member who drafted the bill said it has not yet been determined whether the judge can ignore the jury's recommendation of mercy and sentence the defendant to death. In a further effort to meet the Supreme Court's standards as they apply to reviewing procedures, all death penalty convictions would automatically go to the Illinois Supreme Court for review. Any death sentence found to be improper would lead to an indeterminate sentence of not less than 14 years. Of course, neither Kosinski's bill nor any other introduced would be retroactive, but would apply only to defendants sentenced to death after the law took effect.

Although the U.S. Supreme Court has sanctioned capital punishment, the picture is becoming increasingly muddled as events develop. The U.S. high court recently overturned the capital conviction of a Georgia man on the grounds that a potential juror was eliminated because he expressed reservations about capital punishment. Because many persons share such reservations, the court said, elimination of a potential juror without sufficient questioning to determine if those reservations would prejudice him or her in the case would lead to overturned convictions. An interesting sidelight to that ruling is Cook County State's Atty. Bernard Carey's opposition to capital punishment. Carey, who is the number one legal officer in a county that has as much violent crime as any in the nation, opposes capital punishment because juries are so reluctant to recommend it that the legal system is "corroded" by it, according to Rep. Katz. Thus, capital punishment is a legal quicksand for the courts and lawmakers.



'No, That One Is Too Big And That One's Too Small . . . This One's Not Tied Properly And . . . '

Engelhardt in the St. Louis Post-Dispatch

Statistics can be found to buttress almost any argument for or against capital punishment, and even the U.S. Supreme Court has called the case for and against deterrence "simply inconclusive." Despite this and the myriad moral and religious considerations of the issue, legislators are reacting to what they perceive to be a "clamor for capital punishment."

Gov. Thompson has said he will sign death penalty legislation meeting the Supreme Court's standards. In his position paper on criminal justice, however, Thompson said, "If punishment does not swiftly follow an offense its impact is diminished. The deterrent value of a criminal penalty depends upon swift and certain adjudication." The absolute finality of capital punishment makes mistakes irreparable, and the slowness of the legal system in such cases detracts from the force of any potential deterrent value. In fact, because the Illinois Constitution mandates a Supreme Court review of all death sentences (Article VI, section 4b), speedy disposition of such cases is impossible.

The larger questions of deterrence and rehabilitation behind capital punishment will not be answered when a bill is signed into law to revive executions of the most vicious criminals. For the law to have even the slightest trace of deterrence, it must be enforced. The Gilmore case in Utah has shown the reluctance to carry out what capital punishment laws mandate — state executions. Perhaps underlining this reluctance is Sangmeister's comment, "I'm not eager to see anyone strapped into a chair and have the life burned out of him. I'm not a sadist. There will be few executions; we all know that. But somebody's going to have to pay for murder with his life to set an example."□

Reprinted from Illinois Issues, December 1976

By MIKE LAWRENCE

Corruption in the legislature

Cement Bribery Trial

IT WAS SPRING. The cleansing rains had arrived, and there was a fresh green face on the landscape; it was a time of renewal when lofty ideals for mankind were proclaimed at high school and college commencements. But this was a special spring for members of the Illinois General Assembly and, in a real sense, for all the people of Illinois. In a Chicago courtroom, a team of young federal prosecutors, not far removed from the ringing idealism of commencement speeches, was engaged in what it came to regard as a cleansing crusade, the elimination of what its captain branded "the stench of corruption in the Illinois General Assembly."

Even as the legislature met in Springfield for the annual spring-summer session, taking actions that would reach into the daily lives of citizens from Chicago to Cairo, six current or former members of that body were huddled for more than two months at the defense table in Chicago facing charges they had sold their votes and their honor. Specifically, the six were charged with taking bribes from the cement industry in 1972 for support of a bill to increase the load limit for ready-mix trucks on Illinois roads.

The tabloid newspapers of the twenties could not have invented a more sensational trial — a trial of two prosecutions, a trial which elicited the outrage of both the government and the defendants, a trial laced with ominous constitutional considerations and charges of "bugging" and betrayal, a trial of shocking revelations that tarnished the reputations of a silk-stocking Chicago millionaire and more than 20 non-defendant legislators, who waited helplessly 200 miles away in Springfield while their names were cited again and again in testimony concerning sordid dealings.

This, too, was a trial of James Thompson's justice. The former U.S. attorney, who at the time of the trial was the Republican gubernatorial candidate, made wide use of immunity in overseeing the development of what became known as the "cement bill" case, or more formally, the *United States of America* v. *Craig et al.* The use of immunity brought charges against Thompson from a battery of defense lawyers, among the cream of the Chicago bar, that he had crumbled before the elite and the wealthy, spared them severe punishment and then, in an indiscriminate search for scapegoats, lassoed innocent men.

A charged atmosphere

The federal prosecutors, assisted by men who had admitted their roles in the bribery scheme, unleashed a hard-hitting and surgically incisive assault on the eight defendants — former Sen. Jack E. Walker (R., Lansing), a onetime House speaker; ex-Rep. Frank P. North (R., Rockford); Reps. John F. Wall and Louis F. Capuzi (both R., Chicago); and Rep. Robert Craig (D., Danville); Sen. Kenneth W. Course (D., Chicago); Peter V. Pappas* of Lake Bluff, a lawyer-lobbyist depicted as the "middleman" between the cement industry and for-hire legislators; and Francis P. Sheahen, a Highland Park cement executive accused of participating in the funding of a bribe kitty. The industry, the government said, had decided it had to buy what it needed from legislators. The legislators, the prosecution contended, were willing sellers and shared in an eventual $30,000 payoff.

Defense lawyers, however, talked of another conspiracy, a kind of counter-conspiracy by the government and those it ultimately clasped to its bosom as prosecution witnesses. Yes, there was a bribery scheme, the defense acknowledged. But the government, too lazy to investigate and in fealty to certain elite interests, had granted immunity from prosecution to several of the real culprits and made deals with others. The government, so the countercharge went, had eagerly bought false stories concocted by the true villains in the scheme.

This was the charged atmosphere in which men who had held or were still custodians of high public office and the public trust in Illinois paraded to the witness chair on the 21st floor of the federal courthouse in Chicago to tell their stories, in which onetime members of the "club" in Springfield delivered stinging, damaging testimony against others, in which secretly taped conversations between formerly close friends were played before a stone-faced but intent jury in a hushed courtroom.

Even prior to the trial there were moments of high drama. In a tense pretrial hearing on whether conversations recorded by former Rep. Pete Pappas* (R., Rock Island), and ex-Sen. Donald D. Carpentier (R., East Moline), should be allowed as evidence, the crossfire of recriminations which characterized the trial was accurately and unmistakably foreshadowed.

Pappas, identified by the government as the ringleader of the bribe-hungry legislators, became a prosecution witness shortly after learning investigators were on his trail. He struck a bargain, selling his incriminating testimony in exchange for a no-jail, no-fine guilty plea to a tax charge. It was a good deal, negotiated by his shrewd lawyer, Stewart Winstein of Rock Island, but it was a pact that caused Pappas, 48, who was

MIKE LAWRENCE
Springfield correspondent for the *Quad-City Times*, he represented the *Times* in his coverage of the cement bribery trial. He is a graduate of Knox College, Galesburg.

*Lawyer-lobbyist Peter V. Pappas of Lake Bluff is no relation to former Rep. Pete Pappas (R., Rock Island). Lobbyist Pappas was a defendant and Legislator Pappas was a government witness.

The prosecution charged legislators had taken bribes to increase the weight limit of ready-mix cement trucks. The defense said the real culprits got immunity

one of the clubbiest of the "club" in Springfield, to betray those he loved and who loved him. For the normally nonchalant Pappas, who brought a deep tan with him to the courtroom, the trial was an ordeal.

William Nellis, ex-Rep. North's lawyer, asked Pappas at the pretrial hearing whether it was "personally distasteful" for him, at the behest of government probers, to wire his office telephone in Rock Island for a conversation with North.

"Yes, sir," Pappas replied in subdued tones.

"Would you even say he was like a brother?" the lawyer asked.

"Yes, sir," Pappas said.

"Did you have a conversation with Pat North . . . in which you told him he was like a brother?" the lawyer persisted.

"Quite possibly so," Pappas said, bowing his head and evading the gaze from the deep-set eyes of his former buddy North, who had come to the General Assembly in 1967 and become fast friends with Pappas, another newcomer.

Stinging testimony from old pals

Former Sen. Carpentier's burden was even heavier. The great Illinois political name he carried as the adopted son of the late Secretary of State Charles F. Carpentier, a man he loved and revered, had been tarnished by the testimony and tapes provided by his trusted friend and former Springfield roommate, Pappas. The once arrogant and high-handed Carpentier, 45, was a near-broken man in the courtroom. He had become a government witness only after being implicated by Pappas, had pleaded guilty to a charge in connection with the case and was now reluctantly testifying against his one-time pals without any assurance that he himself would not end up behind bars in a federal penitentiary.

Carpentier was asked at one point during the pretrial hearing about his reaction when asked to wear a body recorder in a conversation with Course, his former Senate colleague.

"Did you want to do this?" a defense lawyer asked.

"I consented to do it," Carpentier replied.

"Did you want to do this?" he was asked again.

"I consented to do this," Carpentier repeated.

"Did you want to do this?" the lawyer persisted.

"I was asked by the government to do this. I entered an agreement with the government, and I thought I was fulfilling my duty," Carpentier said.

Before the trial began, legislator Pappas and his lawyer had expressed fears for his personal safety and that of his family. This was revealed when plea bargaining materials were unsealed in January 1975. Included was a letter from government prosecutors to lawyer Winstein: "We understand," they wrote, "your concern that because Mr. Pappas will be providing information concerning various legislators and their relationship with members of the organized crime syndicate in Chicago, his incarceration and full cooperation represents a serious threat to him and his family in the area of serious bodily harm. We believe your client's fears are well-founded."

If Pappas had misgivings about becoming a government informer, however, they did not inhibit the well-to-do Rock Island businessman and entrepreneur from weaving a spell-binding narrative of corruption carried out almost matter-of-factly at the citadel of Illinois government. Pappas, named as "Outstanding Young Man" by the Rock Island Jaycees in 1961 and a traveler in high society circles in the Quad-Cities, said he first learned there was money to be made on the "cement bill" from his friend, lawyer-lobbyist Pappas, who had been legislative liaison officer for several secretaries of state, including the late Paul Powell. Rock Island's Pappas said the lobbyist, no relation to him, told him in the fall of 1971 during a conversation under the rotunda near the House chambers in the Capitol that "he could get us some money for passage of weight relief legislation."

Courtroom lineup

Defendants

Rep. Louis F. Capuzi (R., Chicago), a legislator since 1955, his guilty verdict in this case set aside by the judge.

Rep. Robert Craig (D., Danville), guilty; 3-year sentence, $5,000 fine. Also charged in another case yet to go to trial.

Sen. Kenneth W. Course (D., Chicago), charged in the main indictment and in another for perjury, guilty; 3-year sentence, $5,000 fine.

Former Rep. Frank P. (Pat) North (R., Rockford), a onetime Rockford alderman who served four terms in the legislature, guilty; 3-year sentence, $5,000 fine.

Peter V. Pappas of Lake Bluff, a lawyer-lobbyist, depicted as the "middleman" in the scheme; guilty; 5-year sentence, $10,000 fine. Not to be confused with **former Rep. Pete Pappas.**

Francis P. Sheahen of Highland Park, a cement industry executive, innocent.

Former Sen. Jack E. Walker (R., Lansing), a onetime House speaker, guilty; 3-year sentence, $5,000 fine.

Rep. John F. Wall (R., Chicago), innocent, but facing an extortion charge in another case.

Defense Lawyers

Harry Busch (Capuzi)
Anna Lavin and **Edward Calihan** (Craig)
James Coghlan (Course)
William Nellis (North)
Sherman Magidson (Peter V. Pappas)
Robert Weber (Sheahen)
William Barnett (Walker)
Tom Hett (Wall)

Defense witnesses

Sen. Robert W. Mitchler (R., Oswego)
Sen. Howard R. Mohr (R., Forest Park)
Sen. Stanley B. Weaver (R., Urbana)
Mrs. Mary Pappas, wife of Peter V. Pappas
Mrs. Pearl Walker, wife of former Sen. Jack E. Walker

Government witnesses

Former Sen. Donald D. Carpentier (R., East Moline), conspirator who became a government informer and pleaded guilty; 3-year sentence, $5,000 fine.

Lester Crown, Chicago, millionaire president of Material Service Corp. who was granted immunity but is an admitted briber.

Rep. Bernard E. Epton (R., Chicago), who said Rep. Capuzi told him he had received $200 from legislator Pete Pappas.

Former Rep. Pete Pappas (R., Rock Island), a chief conspirator who became a government informer and pleaded guilty; got probation.

Government lawyers

Dan Webb, chief prosecutor
James Holderman
John Gleason

Witness lawyers

Stewart Winstein (Rep. Pappas)
Albert E. Jenner, Jr., attorney for Lester Crown and an architect of the package immunity deal for Crown and company, also former minority counsel in the Senate Watergate Hearings.

Price to pass the bill was $10,000 for each side of the aisle in both chambers, a total of $40,000 to be paid after final passage

"He asked me how much it would take. I told him I didn't know, but I would get back to him," the former legislator testified.

Legislator Pappas was then chairman of the Motor Vehicle Laws Commission, the unit that would initially consider the weight relief legislation for the cement industry and whose endorsement would provide clout for the measure as it moved through the General Assembly. He said he contacted Carpentier "probably" in the Senate chamber and advised him there could be money on the "cement bill." The two of them were hesitant to set a price, Pappas testified. That was done, he said, by a third commission member, Rep. Robert Craig of Danville.

At a meeting under the rotunda somewhere between the House and Senate chambers, according to Pappas' testimony, Craig said he would need $10,000 "for his side (House Democrats)," and the money "would have to be paid as the bill passed each house." Pappas said it was then decided that $10,000 each would be required for the Democrat and Republican sides in both chambers — or a payoff total of $40,000.

Pappas said he then stated, "Donny [Carpentier], if you're going to handle your side of the Senate, and, Bob [Craig], if you're going to handle your side of the House, and, if I'm going to handle the Republican side of the House, we need a Democratic senator to handle that side of the Senate." Course's name was mentioned, Pappas said, and the Rock Island legislator contacted the Chicagoan "at his desk" on the Senate floor.

"I said, 'Kenny, there's going to be some money on a cement bill. I want to know if you'd be interested,'" Pappas testified.

He then quoted Course as replying, "Whatever you guys decide is fine with me."

Pappas testified he subsequently contacted Reps. North, Capuzi and Wall to inform them he had "something going" on the cement bill and would appreciate their help. He said all responded affirmatively, and Wall said he "had seven," presumably legislators, who would join in the effort. But the scheme was not without its snarls, Pappas testified. He said the industry balked at the suggestion that House members should be paid off when the measure cleared that chamber. It wanted no payoff until the bill had become law, passed by both chambers and signed by Gov. Richard B. Ogilvie. A compromise was reached, Pappas said, whereby payment would be made after approval by the General Assembly but regardless of gubernatorial action.

Even then, Pappas said, the industry was apparently preparing to welsh on the deal in the summer of 1972, when Ogilvie vetoed the bill after it cleared the Senate by the barest of margins. He said he laid it on the line, however, to Morris Lauwereins, a vice president of the giant Material Service Corp. in the Chicago area. Pappas said he warned the cement executive: "You guys may be looking for support next [legislative] session. Unless you guys take care of your commitments, there is no way anyone will support you in the future."

Dividing the loot

With that, Pappas said, $20,000 was released for legislators with an additional $10,000 for others in the scheme. He said he received $10,000 in $100 bills from lawyer-lobbyist Pappas in the front seat of a car parked at "The Coffeehouse," just off Interstate 80 near Marseilles, Ill. Legislator Pappas said the lobbyist told him he had given $5,000 to Sen. Course and was bringing $5,000 more to Rep. Craig in Springfield. Legislator Pappas said he then gave 10 of the bills to Rep. North in the parking lot and turned over $5,000 to Sen. Carpentier as the two of them drove along Interstate 80 after the meeting. Pappas, who ended up pocketing about $2,900 in the deal, said he eventually gave $200 to Rep. Capuzi in a handshake at the Conrad Hilton in Chicago and $700 to Rep. Wall at the rear of the House chambers.

He said he saw Capuzi at the annual dinner of the Central Motor Freight Association at the Hilton and "went to the men's room and took two $100 bills out of my money clip and moved it [the money] up into my coat pocket." When he returned, he said, he saw Capuzi leaving a group of people. "I said, 'Lou, I've got something for you' and shook hands with him and left the $200 in his hand," Pappas testified.

The testimony of Carpentier, who apparently garnered $3,700 in the scheme, generally supported that of Pappas, the chief government witness, but the former East Moline senator with the once magic political name added some excitement of his own. He said he had distributed $1,300 of payoff money to nine other Republican senators — a revelation that prompted shudders in Springfield because Jack Walker had been the only G.O.P. senator indicted. What was the situation? Were other indictments yet to come?

Dan Webb, captain of the prosecution team, further dramatized the disclosure when he said "this matter [investigation of the cement bill scandal] is not completely over" as far as a federal grand jury is concerned. But subsequent indications were that chances for more indictments — based on Carpentier's testimony and later statements by Course concerning 15 Democratic senators, including Senate President Cecil A. Partee (D., Chicago) — were slim. Denials of receipt of money flew throughout the Statehouse after the testimony of Carpentier and Course. And even those who acknowledged receipt of funds from one of them said they accepted the cash as legitimate campaign contributions.

At any rate, the most damaging testimony by Carpentier was inflicted on former Sen. Jack Walker. Carpentier said he asked Walker to handle the cement bill on the Senate floor after it was approved by the House and told Walker there would be "help in the district" during the next campaign. Carpentier said he mentioned the $500 figure to his colleague and subsequently mailed five $100 bills to Walker's home.

Over the strenuous objections of defense lawyers, tape recordings were played to prop up the testimony of legislator Pappas and Carpentier. The tapes of conversations involving eventual defendants were made after the government began putting heat on suspects in the bribery scheme. Defense lawyers bristled when the jurors were

provided with transcripts of what were largely inaudible conversations.

Indeed, those tapes may play a significant role in appeal proceedings, but it became clear, as the trial continued, why the government fought so hard to get them to the jury. Sen. Kenneth Course, for example, had told a federal grand jury in 1973 that he had received no money in connection with the cement bill. But, in a taped conversation with legislator Pappas on the Senate floor in which there was discussion of a $5,000 contribution from Course to lawyer-lobbyist Pappas for a "legal defense fund," Course said, "He [the lobbyist] wants $5,000? Jesus Christ! I wind up with $700 on this whole goddamned deal."

Rep. Robert Craig, who stood on a constitutional point that legislators' actions on bills were not subject to scrutiny and offered no other major defense, was quoted in the transcripts of a conversation with legislator Pappas as saying, "I got four," which the government said meant $4,000 in the context of that conversation. In still another recorded conversation, the lobbyist Pappas appeared to be coaching the legislator Pappas and Course on what to say in upcoming grand jury appearances. "As long as the answers you give are consistent with the answers I give, no problem," the lobbyist told the legislators.

Sen. Walker, in one taped telephone conversation with Carpentier, initially said he did not recall receiving any money from Carpentier. But, when Carpentier called him back later and said he had sent him $500 on "this stuff," Walker replied, "Cash or what?"

"Cash," Carpentier said.

"You sent me a campaign contribution, right?" Walker said.

"I sent you $500," Carpentier said.

Walker later repeated, "That was a campaign contribution, right?"

Carpentier said, "Well, I don't know how to put it."

"The way I put it," Walker replied, "was that I didn't know anything about it."

"Goddammit," Walker said at another point, "did we discuss it afterward [after the money allegedly was sent]?"

Carpentier reiterated that he sent Walker the money.

"If you say you did, I know you did, goddammit," Walker said.

Competing with legislators Pappas and Carpentier for star billing among government witnesses was Harvard-educated Lester Crown, scion of one of America's wealthiest families and a confessed briber. With himself, his corporate management team and the corporation, Material Service Corp., protected by an umbrella of immunity, the proud, broad-shouldered, flawlessly groomed millionaire of about 50 told of how he pulled thousands of dollars from his personal office safe in full awareness that the funds were earmarked for politicians on the take. He also conceded that top officials in his company submitted phony expense vouchers and turned over the cash to replenish his personal accounts.

Attacks on Crown's testimony

Crown, son of a onetime owner of the Empire State Building, said he had frequently made political contributions but not under the conditions prevailing when he tapped his safe for $8,000 and $15,000 installments in 1972. He said he had not previously contributed on a "quid pro quo" basis involving a particular piece of legislation, nor had there been a condition that the money would be returned if the legislation were not enacted into law — an impression apparently given to the cement industry by "middlemen" in the scheme. Crown also said he had never, prior to his payments on the cement bill, replenished his personal funds with company money gathered by having other company officers submit bloated expense vouchers.

"Your understanding and assumption was that the money to be issued was to be given to members of the General Assembly, wasn't it?" chief prosecutor Webb asked.

"Yes, sir," Crown replied.

Webb also asked, "You knew . . . that payment of bribes from private industry to the General Assembly was illegal, didn't you?"

Again, an affirmative response.

In reply to a question from a defense lawyer, Crown said, "There was no question that in the way he [another company official] told me about the $8,000 [which Crown took from his safe in June] that it was going to be used to pay members of the Illinois legislature."

As if Crown's account of shabby dealings in the executive suites of a major corporation did not raise enough eyebrows, Crown's lawyer added a dash of surprise himself. Albert E. Jenner, Jr., the prestigious Chicago lawyer who had served as minority counsel in the U.S. House Judiciary Committee's impeachment proceedings concerning President Nixon and whose law firm had negotiated the package immunity deal for Crown and company, startled both prosecution and defense lawyers by rising from his front-row seat in the spectators' section to object to a question posed to his client. This sent lawyers and Judge George Leighton scurrying into a huddle on the novel move. It was determined that Jenner had a right to object to questions that might impinge upon the confidentiality of lawyer-client relationships and he could do so from his ringside seat.

But that move could have helped serve the defense's interest because one of its most important contentions was that Crown and Jenner received deferential treatment from the time prosecutors found themselves on the trail of Material Services Corp. The heavy hitter for the defense in the attack was Course's lawyer, James Coghlan, a lumbering but crafty man whose head is covered with ringlets of hair. Coghlan, in his opening argument, pointed to Course's World War II record and then stated, "There are people in this country who don't have to go to war and to jail, and Lester Crown is one of them." He said Course and the other defendants were falsely implicated by "elitists" who share "exclusive neighborhoods, the board rooms of giant corporations and banks and terraces of exclusive country clubs."

In his closing argument, Coghlan, acting as cleanup batter for the defense, insisted, "The Lester Crowns of this world always get a better deal. Why should it be different if they get into trouble?" His voice tinged with sarcasm, he turned to the middle-to-lower class jury of six men and six women and asked, "Isn't that what made this country great?" Throughout his final appeal to the jury, Coghlan peppered his remarks with references to Jenner as "super lawyer" or just plain "super."

Actually, the Crown issue was one that all defense lawyers could rally around without concern for damaging the case of one defendant while trying to bolster another. The defense also formed a common bond in searing attacks on former legislators Pappas

The defense ripped into the prosecution witnesses. Each defendant had to make his own case. Most pleaded ignorance that the money was a payoff

and Carpentier. Tom Hett, Rep. Wall's lawyer, told the jury near the conclusion of the trial that Pappas was "laughing out of the side of his mouth at everyone in this room . . . because he put one over on us." He speculated that Pappas pocketed more money than he had admitted. Pappas, he contended, fooled the government and was attempting to deceive the jury by "selling his friends and everybody else out." Hett persisted, "He is a tax evader. He admitted he is a briber. He admitted he is a conspirator, and he is a convicted felon." Harry Busch, Rep. Louis Capuzi's lawyer, depicted the chief government witness as an "arch-conniver."

James Coghlan, Course's lawyer, described Carpentier as "whiskey soaked" and William Barnett, former Sen. Walker's lawyer, lashed out at Carpentier as "an admitted liar and cheat" who "tried to trap his friends" in a "desperate" effort to avoid punishment "for his crimes." He pleaded with the jury, "Do not destroy Jack Walker on the word of this man." Barnett continued, "Three times he took the solemn oath [before a federal grand jury prior to becoming a government witness] to tell the truth . . . and three times swore falsely."

As part of the defense assault on Pappas and Carpentier, lawyers elicited admissions from them that they had taken bribes on at least one other bill prior to the cement bill scheme. "You and Representative Pete Pappas shared some money in connection with a garbage bill [weight relief for garbage trucks], didn't you?" Coghlan asked Carpentier in the first of a series of piercing questions. Carpentier responded affirmatively to that query and to Coghlan's next assertion that he "sought to conceal" the bribe. The lawyer persisted. Carpentier was "not willing to face up to the consequences of his crime," right? "That was true," the former state senator replied.

Earlier in the trial, Coghlan ripped into Pappas in a similar line of questioning. "Tell us when in point of time it was that you decided you would be false to the people who sent you to Springfield and take the money for your vote?" Coghlan asked. "Sometime in 1971," Pappas replied quietly. "When you decided to accept your first bribe in 1971, did you desire to conceal your criminal conduct from your fellow legislators and the General Assembly and the people who sent you to Springfield?" Coghlan asked. "I didn't think about that," Pappas answered. The lawyer then asked whether Pappas, after accepting his first bribe, was determined to maintain "the facade of respectability you had maintained about your legislative career." The reply: "Yes, sir." Finally, Coghlan posed, "You never went before the people who sent you to Springfield and confessed . . . ?" Pappas said in a hushed voice, "It was nothing to be proud of."

Contributions or bribes?

Still, each defendant had to make his own case. One of the more oncrous loads was borne by Course, the normally quiet, affable manager of Chicago's lakefront airport, Meigs Field, and a longtime loyal soldier in Chicago Mayor Richard J. Daley's army. Senator Course, 62, was cited not only in 14 counts of the December 1974 main indictment but also in a separate perjury indictment for allegedly lying to the grand jury in 1973. After taped conversations showed Course acknowledged receipt of some money, he adopted the posture that he believed the $5,000 in cash he received from lobbyist Peter V. Pappas in the fall of 1972 was for campaign contributions from "the trucking industry" to be distributed to fellow Democrat senators. The grand jury, he said, had asked him about bribes and payoffs and not legitimate campaign contributions.

Also carrying a king-sized defense burden was lobbyist Pappas, represented by Sherman Magidson, regarded as one of the best appeals lawyers in Chicago. Pappas, an alumnus of the University of Chicago and recognized expert in trucking and public library law, had been implicated by both legislative and cement industry witnesses as the "middleman" in the scheme — the conduit for funnelling funds from the industry to corrupt legislators. He did not testify in his own defense, but he sent several witnesses to the stand to chip away at portions of the case against him. Among those witnesses was his wife, Mary, herself a lawyer and a delegate to the historic 1970 state Constitutional Convention.

Also sending his wife to the witness stand while not speaking himself was former Rep. Frank North, 48, who had been House sponsor of the cement bill. North's defense, supported by the testimony of his spouse, was that 1972 was a difficult reelection campaign for him and he accepted the $1,000 in cash from legislator Pappas as a campaign boost from a trusted friend rather than as a payoff for supporting the cement bill. Even prior to the verdict, North, a Rockford alderman for 16 years, had been damaged by the cement bill case. As rumors circulated in 1974 about his possible involvement in the cement bill scandal, he was defeated in a bid for reelection.

A third defendant's wife to testify was Mrs. Pearl Walker, who said she opened all her politician-husband's mail at home for the last 15 of their 26 years of marriage. The mother of three and wife of former Senator Walker provided one of the most emotional moments of the trial when she was asked whether she ever opened "an envelope containing $500 in currency." Emotion gripped her voice and tears came quickly as she said, "No, sir, I have never received any currency in the mail."

Her husband was one of the most popular members among his colleagues during his years in Springfield which terminated when he was defeated for reelection in 1974. If his fate were left to "club" members and staff there, Jack Walker would have been in no danger of going to prison. They would not have dreamed of doing that to the garrulous, fun-loving Walker, who packed about 200 years of living into 65. The former House speaker, however, was not taking his case to the "club." And the jury had heard damaging testimony from Carpentier and also taped conversations in which Walker appeared to be admitting receipt of the money.

Taking the stand in his own defense, Walker said he had been tricked by Carpentier into believing he received money. In the fall of 1972, at about the time Carpentier said he sent $500 to Walker's home, the latter had placed

$500 in a bank account, a deposit that appeared on records checked by Walker in the summer of 1974 as he became aware he was a target in the cement bill investigation. But Walker said he learned, after the taped conversations with Carpentier as more detailed bank records became available, that the $500 deposit represented a number of checks and not a single cash amount. He had been duped, he contended, largely because of an unfortunate coincidence. Three of Walker's former Senate colleagues took the stand to help him attack Carpentier's credibility. Carpentier said he had sent $100 bills to Sens. Howard Mohr (R., River Forest), Robert Mitchler (R., Oswego) and Stanley Weaver (R., Urbana). Each, under oath, categorically denied receiving the money or ever being offered anything for supporting the cement bill.

Also insisting he received no money on the cement bill was Rep. John Wall, the silver-haired, grandfatherly type of representative from Mayor Daley's ward in Chicago. Wall, 62, still facing extortion charges in another case, said he had never talked with legislator Pappas about the cement bill, had never agreed to recruit other representatives for the scheme and had not received $700 from Pappas. There were no taped conversations to dispute his version. The government, according to one of the prosecutors, had not asked Pappas to tape Wall because there was no "natural situation where it could be done."

Similarly, there were no tapes of conversations between Reps. Pappas and Capuzi. But Capuzi, taking his turn on the witness stand, acknowledged receipt of $200 from Pappas. He did so after Rep. Bernard E. Epton (R., Chicago) testified that Capuzi in a 1974 conversation concerning the cement bill probe said he had received $200 from legislator Pappas. Capuzi, 55, a nonpracticing chiropodist or "toe doctor," as his lawyer put it, said he accepted the money from Pappas as a campaign contribution from a fellow legislator he knew to be "a man of means." He said, "Pete would tell us while we were sitting around that he was . . . loaded. He'd say, 'You guys sweat it out here. I'm going to Acapulco.'" The Chicago Republican, often linked to the ill reputed West Side bloc in the General Assembly and also a deputy coroner in Cook County, pointed out that he did not even vote for the measure when it cleared the House, 108-1, but the prosecution was quick to underscore that he had helped move the bill out of the House Motor Vehicle Laws Committee.

Robert Craig, a veteran representative, auctioneer and successful grain, dairy and livestock farmer, presented the quietest but potentially most significant defense. He stood his ground on a constitutional point. The "speech or debate" clause of the federal and state constitutions, his lawyers insisted, severely limit inquiries into the legislative process.

Craig's lawyers — Anna Lavin and Edward Calihan — won victories on that point in another case, *U.S.* v. *Markert*, in which Craig is a defendant. That case — involving alleged extortion of the rental car industry by legislators in order to kill a bill unfavorable to the industry — has not gone to trial. However, prior to the cement bill trial, a district judge and later a three-judge appellate panel came down strongly on the side of Craig's lawyers in ruling on a pretrial motion.

Immunity defended

This hobbled prosecutors in the "cement bill" trial because they were barred from introducing the votes or floor speeches by defendants on the "cement bill" unless the defendants took the witness stand. Thus, it did not come to the attention of the jury, for example, that North was a major sponsor of the "cement bill" in the House.

Ironically, the earlier triumphs by Craig's lawyers were reversed after the cement bill trial in a ruling by the full appellate court of the 7th Circuit, but there was little doubt that the constitutional fight, which could affect bribery prosecutions of legislators for years to come, will be carried to the U.S. Supreme Court.

Cement industry executive Sheahen's defense was far less complex and he chose his family lawyer, low-profiled Robert Weber of Highland Park to carry his cause. True, Sheahen was president of the Northern Illinois Ready-Mix Association, focal point of the bribe kitty, at the time the scheme was in progress. But he was kept in the dark, he insisted, while others in the association from larger companies like Material Service Corp. and Meyer Material did the dirty work. He asked his company to contribute $800, he testified, because he thought the funds would be used for legitimate lobbying activities. Sheahen, an Annapolis graduate with a well-scrubbed look, paraded several character witnesses to discuss his roles as a civic leader, Boy Scout stalwart and church school teacher. His wife was in the courtroom virtually every day during the trial, remaining home one day when Sheahen wanted to spare her from "rough language" in taped conversations aired in the courtroom.

Chief prosecutor Webb, barely over 30 and a product of the small western Illinois community of Bushnell, had his work cut out for him as the last lawyer to address the jury. He spent considerable time on the immunity question. The government, he said, had to negotiate the package deal with Crown, the Material Service executive, and his counsel, Jenner, because its investigation had come to a dead end. Particularly critical, he said, was the testimony of Material Service's lobbyist in Springfield, the now-deceased James McBride. And that testimony, which he said was jarred loose only by the use of immunity, "broke the case wide open." The role of Crown would never have become public knowledge otherwise. Even though Crown was not prosecuted, the young lawyer said, "the facade of respectability that he surrounded himself with all his life was shattered in this courtroom." Moreover, a half-dozen cement industry officials had pleaded guilty in the case and were awaiting sentencing; some bribers were to pay a more tangible penalty than Crown.

Webb then turned his rapid-fire oratory on the controversial involvement of Sen. William C. Harris (R., Pontiac), Senate Republican leader for several years (1976 G.O.P. candidate for secretary of state), in the cement bill case. Reacting to innuendoes from the defense that Harris had been spared in a selective prosecution by the government, Webb said the senator had been thoroughly investigated. True, Harris had been named in the very first tip in the case — a tip that came from Richard Dunn, a Senate Republican staff member at the time who was close to a Harris intraparty foe, Sen. Terrel Clarke (R., Western Springs). But, Webb insisted, Harris' role was scrutinized and there was no evidence of any wrongdoing on his part in connection with the case. This

Reprinted from Illinois Issues, January 1976

In Springfield, the news of the convictions stunned waiting legislators. 'Would the convictions mean a new round of prosecutorial assaults on the General Assembly?'

echoed the testimony of Webb's boss, hard-charging U.S. Attorney Samuel K. Skinner.

In addition, Webb and another U.S. attorney, James Holderman, who along with John Gleason did much of the legal research for the prosecution, told the jury why it would be considering mail fraud conspiracy and mail fraud charges when the entire case had been concerned with bribery allegations. The U.S. mails, they explained, cannot be used in furtherance of illegal schemes and state lines cannot be crossed to aid the machinations of wrongdoers. In this case, both were done, they said.

Webb told the jurors: "Your verdict may ring out around this state and it may ring out loudest in the Illinois General Assembly. The people of this state . . . and that Illinois General Assembly, which I'm sure has mostly good people in it, are a lot better off today because what was going on in that Illinois General Assembly was exposed."

A near sweep for the government

After more than 24 hours of deliberation over a three-day period, the jury returned with its verdicts. It did so in a mammoth ceremonial courtroom on the 25th floor of the courthouse. An overflow crowd, reportedly the largest in years to witness such an event, could not be accommodated in the 21st floor courtroom where the drama had been unfolding on a daily basis. Meanwhile, legislators in Springfield and House and Senate pages waited by telegraph machines in the Capitol pressroom for the historic decisions. After agonizing moments of delay, the verdicts came, like bolts of lightning. Walker, guilty. Craig, guilty. North, guilty. Course, guilty. Capuzi, guilty. Lobbyist Pappas, guilty. Wall and Sheahen were acquitted, but they restrained their joy in light of their co-defendants' fate. The government had been handed a near sweep.

Legislators in Springfield were stunned. Already, nearly 20 of their colleagues had been indicted in about three years. Would the convictions mean a new round of prosecutorial assaults on the General Assembly? The result was certainly encouraging to corruption probers. Would the convictions mean that legislators would continue turning on their colleagues to save their own skins, to break the rules of the club? The success of the prosecution would probably mean that legislators might be more inclined to make deals when convinced that the government was on to something. Would the convictions mean a cleaner General Assembly? That remains to be seen.

The jurors interviewed after the verdict left little doubt that they were outraged by what they believed to be the "stench of corruption" and wanted to take decisive action to discourage payoffs in the future. But there seemed to be a different kind of outrage among legislator-defendants and many of their Springfield colleagues. Rep. Craig, guilty on all 14 counts and charged in still another indictment, said, "When all the smoke clears, there will be some red faces and mine won't be one of them."

When Judge Leighton, in a post-trial move, granted a motion for acquittal for Rep. Capuzi because of "insufficient evidence" and without further explanation, the Chicago legislator was greeted warmly by many of his colleagues as he returned to the House. Sentencing was October 29 *(see sidebar on p. 7).*

In fact, the first official response of a legislative body came when the House overwhelmingly approved a resolution urging the governor to block state contracts with admitted bribers — a sign of distaste for the Lester Crowns of the world.□

By holding out against Partee as Senate chief, they wrested a leadership spot for Terry Bruce. As a study group, they may have succeeded because nobody insisted on being chairman. They hesitate about taking a position as a group

BURNELL HEINECKE
A veteran State House correspondent, he spent 10 years as Springfield bureau chief for the *Chicago Sun-Times* until recently starting the Heinecke News Service. He was a Nieman Fellow at Harvard University, 1956-57, and is president of the Legislative Correspondents Association.

By BURNELL HEINECKE

New force in Senate — They call themselves 'The Crazy 8'

VISITORS to the Illinois General Assembly have generally been advised to take a quick look at the dull, predictable Senate and then move to the House for the circus of democracy in action. Only a few years have passed since Sen. W. Russell Arrington (R., Evanston) ruled the "House of Lords" — as angry House members frequently call it — armed with massive GOP majorities. After the November 1974 election there were predictions Sen. Cecil A. Partee (D., Chicago), who had presided over an evenly divided Senate in 1971-72 (the best the Democrats had been able to do in decades), would have his chance to give Republicans a bit of their own medicine. There were to be 34 Democrats and 25 Republicans.

Everyone believed that by session's end Mayor Daley's Democrats would block some hated appointees of Gov. Walker, or shape the big highways appropriations bill to their own liking. But nothing like that happened. The idea of monolithic party divisions, with Republican ranks solid and Democrats equally rigid in partisan phalanx, evaporated in 1975 and the Senate became as much a chamber with blocs within parties as the House usually was.

The spark of creation

Almost as soon as Partee wound up the post-election 1974 fall session with his announcement of an early December Democratic Senate caucus to pick leadership for 1975-76, a new spark of rebellion was struck. Ten Democrats fired off a telegram protesting the haste. They wanted the caucus postponed until the night before the session opened in January.

The meeting went off as called by Partee, but not as planned. He emerged somberly to announce that he had been the majority choice. But the word was soon out that 11 of the 35 elected Democrats had not voted for him. "Don't worry," was the response of the Daley Regulars. "They'll vote for him when the chips are down in January."

They didn't. At the end of the first roll call, there were no responses from eight Democrats, and Partee was shy of the 30 votes needed to be elected president of the Senate for the 79th General Assembly. A recess was called. Several hours later, when the Democrats returned to the floor, Partee had his 35 votes — but the eight dissenters (See accompanying list) had themselves a spot in leadership. Sen. Terry Bruce of Olney was one of Partee's three assistant majority leaders.

What's in a name?

Bruce jokingly called his backers "The Crazy 8" because everyone thought their rebellion had killed any real hopes of Democratic accomplishment. Bruce regrets having used the term. On the Republican side of the aisle, Sen. Terrel Clarke (R., Western Springs) called the independent-minded bloc "The Sane 8" for having won a fight for openness in the party. There were times during the six-month session that Sen. Don Wooten (D., Rock Island), who was one of five independents in the 1973-74 session, referred to his compatriots as "The Timorous Ten" or "The Elegant 11." But by July, he and others questioned whether they were perhaps down to a "Sometimes 7."

Because the independent Democrats have such a loose structure, it is hard to say with certainty who is in or out of what has also been called the Democratic Study Group (DSG). The only real way to understand the group is to examine its origins and development.

Bruce was the forerunner in 1970. A former legislative staff intern assigned to the Senate Democrats, he knew something about "the system," that is, he understood the way things were done in the past. Kenneth W. Buzbee (Carbondale) came along in 1972; so did Dawn Clark Netsch (the Northwestern University Law School professor who upset regular Democrat Sen. Daniel O'Brien in Chicago's Near North Side district), the late Betty Keegan, a former Constitutional Convention delegate from Rockford, and Don Wooten, Rock Island newscaster and TV weatherman. Wooten recalled having been lumped with some of the other winners in a post-election news story as "the bright hopes of the future." He sought them out to consider forming a study group to share their knowledge.

Buzbee and Keegan were enthusiastic about the idea and said Wooten should discard his suspicions about Mrs. Netsch. They insisted that she was "a different kind of Chicagoan," one he would like. And Bruce, they said, was "the bright young guy in the Senate" whom they wanted to work with. The five met regularly for informational sessions in 1973 and 1974, but when they spoke up in caucus, they were picked off one by one and knocked down.

They did, however, get Democratic leaders to go along with their idea of having a Senate Democratic dinner to raise funds for the 1974 senatorial candidates. This came about only after they threatened to go it alone if Chicago Democrats chose not to participate. The success of that dinner, and Bruce's inclusion in the steering committee of four, was a major coup. It also helped swell Democratic ranks to 35.

The genesis of 'eight'

Vincent Demuzio of Carlinville upset Sen. Junie Bartulis (R., Benld). Jerome Joyce of Reddick pulled the biggest surprise by beating Sen. Edward McBroom, GOP Chairman of Kankakee County. Both victories came with considerable help from Gov. Walker. William Morris of Waukegan, a fiercely independent former radio

newsman who rejected practically everyone's help so he could win his own way, upset Sen. John Conolly (R., Waukegan). Mrs. Vivian Hickey of Rockford, who had replaced the deceased Betty Keegan, won a term in her own right. So now there were eight.

"People said after the leadership fight, 'You sold out very cheaply,'" Wooten recalled. "The guys in Chicago thought that too because we only wanted a guy in leadership and then we wanted our choice of committee assignments. But that really is all that our organization has been about. With committee assignments, for the first time every one of us is represented on some committee. When we sit down and discuss bills, if that person has done his homework, he tells us what happened in committee. I think we can go a long time, weather a lot of storms, and a lot of internal dissension, if we keep running the meetings that way."

'THE CRAZY 8'

Terry Bruce, Olney
Kenneth W. Buzbee, Carbondale
Vincent Demuzio, Carlinville
Vivian Hickey, Rockford
Jerome Joyce, Reddick
William Morris, Waukegan
Dawn Clark Netsch, Chicago
Don Wooten, Rock Island

Clearly, Wooten, the peacemaker, is more optimistic than some of his colleagues. Bruce recalled early morning meetings. "That was the part that almost killed us," said Bruce. "It wasn't religious, but near the end of the session we were meeting nearly every morning, and after the session and so forth."

The reason the Senate study group prospered, though similar House efforts failed, both Wooten and Bruce agree, was that the House group usually involved only liberals talking to one another and arguing over who was to be their leader or spokesman. "We never had anyone who chaired our meetings and we never had anyone who called them or anyone who was in charge of anything in particular," Bruce explained. "We're not the behemoth that some of the regulars always think that we are always sitting and plotting and organizing," he adds. "All that we are doing is trying to get the basic information that makes this place tick. We never voted alike, and that is what drove everybody crazy."

Not all of one mold

Wooten agreed. "We have shrunk to as few as four and grown to as many as 10, except of course on a unanimous roll call. Whenever there is division of opinion, that division runs through our group. There's no doubt about it that we frequently vote together. And the reason is, you know, that we think alike. We'd probably vote together even if we didn't meet, because frankly, in meeting is where some of our divisions really develop. Buzbee and Netsch really cut me up on my National Guard Scholarship Bill (S.B. 24). We don't hesitate to differ with one another. The important thing is, and the hardest thing to get over is, that we differ on issues, not fight on personalities."

By mutual agreement, Dick Newhouse (D., Chicago) joined the group before he ran against Mayor Daley in Chicago's primary this year. So did Gene Johns (D., Marion) after Sen. Richard M. Daley and his Chicago colleagues exploded in rage at a Johns' comment ("Thank you, Mayor") in committee one day, and were about to move to expel him from the Senate. Even Robert Lane, who upset Sen. Jack Walker (R., Lansing) last year, attended some meetings of the DSG. "We invited Lane to join us, although he is in the [regular] organization, and that's how we got to 11 at times," Wooten said. "We're looking for an association of equals," Wooten added. "If we're going to discuss something that's going to be painful to anybody — for instance, if I tell Lane 'We're going to meet and discuss remap, you want to come or not?' he says, 'I think I'll take a pass.' Okay. So we're sensitive to one another's problems."

This collegial sensitivity and the general independence of the individuals of the group make it hard to predict how the group will act on every issue. Curt Jensen, the governor's legislative liaison man to the Senate, insisted he frequently had difficulty finding out what the bloc was up to, even though some viewed them as Walker's lackeys. "The bottom line meaning of the Crazy 8, or whatever you call them," Jensen says, "is the total change in which the Senate is operating this year and the way in which it will continue to operate. They were a negotiating bloc and that is something that has never been in the Senate before. If there's going to be strong leadership — not autocratic leadership — in the future, it is going to be based more on a consultation with the people in the party to determine where most of them are going, so that you as leader can lead them in the currect direction, rather than deciding ahead of time and then beating everyone into line."

The uses of adversity

Buzbee is not so optimistic. He says, "My idea of the group is that it still ought to be a study group. When we start to take a position, that it is *our* position, then I'm a little hesitant about it. It [the group] will continue, as long as it doesn't become Walker-controlled. I am afraid it is about to be controlled — something I resent bitterly. I think our governor has used us. We were a group of independents. Sometimes we voted with Walker, sometimes we voted against him. But he went out and claimed things like he controlled our votes, that we were his legislators and I don't buy that. Where I come from, I am the regular organization."

The reason Jensen believes that the Crazy 8 will survive, and even grow, is the manner in which the Daley regulars tend to throw dissidents aside, almost out of the party. Isolated, the group may thrive. Such are the uses of adversity. □

Reprinted from Illinois Issues, May 1976

By CONRAD P. RUTKOWSKI

Double-Dipping: Should lawmakers have to give up their second public jobs?

Launched by a group who call themselves the Coalition for Political Honesty, a state constitutional amendment is now being proposed which would place a ban on 'double-dipping,' the political equivalent of moonlighting

DOUBLE-DIPPING. You won't find the expression in any dictionary, but it is well understood in governmental circles as the political equivalent of moonlighting — holding a second public job in addition to a full-time government position. In less elegant language, double-dipping has been defined as "going to the public trough more than once."

Is it legal? Generally speaking, yes — as long as you don't get paid for both jobs at the same time and the two jobs are not incompatible (a job in the executive branch of state government would be an incompatible job for a legislator).

But double-dipping would be totally and absolutely banned for members of the General Assembly under a state constitutional amendment now being proposed. A group calling itself the Coalition for Political Honesty is now gathering the necessary signatures to place the amendment on the November ballot. Double-dipping is also the subject of another proposed amendment supported by 23 of the 25 Republican senators. The Senate proposal, however, is less sweeping. For either amendment to be on the November ballot, supporters must meet a May 2 deadline for proposing constitutional amendments. The Coalition needs 375,000 signatures on petitions and the Senate Republicans need approval of their proposal by a three-fifths vote in the two houses of the General Assembly. If both fail to meet the deadline, there will be no November referendum on this issue.

As it stands now, neither the Constitution nor any existing state laws in Illinois *totally* preclude members of the General Assembly from being on more than one public payroll. Article IV, Section 2(e) of the Constitution contains the following provision:

> No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly.

This means that a state legislator can receive compensation from another level of government, but only when he or she is not in Springfield on General Assembly business. For example, legislators who are also public school teachers (and some are) can't be paid their teacher's salary for the days spent on legislative business. But they can keep their teaching positions and be paid for days when the legislature is in recess. It is, in fact, lawful for a legislator also to serve on a county board, according to a January opinion of the attorney general (File S-1027), subject to the constitutional ban on double pay for the same time.

How many double-dippers?

How many legislators now hold another paying job in addition to their legislative position? The official record available at the time this was written affords only a partial answer to the question, but it does indicate that 15 senators and 37 representatives were receiving compensation from another level of government during 1974. This ranged from providing legal service as attorney for local governments to such regular occupations as city or county employee.

Of these 52 legislators, 35 are Democrats and 17 are Republicans. Thirty-eight are from Cook County (where the Democratic party is dominant) and 14 from downstate. This alignment seems to reflect the fact that in Cook County public service is usually a full-time occupation and may become a career. Service as a public employee may be rewarded by an opportunity to go to Springfield; after that, a judgeship or other higher office may be the prize.

The kinds of positions held by the 52 legislators were as follows:

	Senate		House	
	D	**R**	**D**	**R**
Attorney for local unit	0	4	5	6
Chicago government	3	0	9	1
Other city, village	0	1	1	1
Cook County government	4	0	6	1
Other local units	2	0	2	0
Teacher	0	0	2	1
U.S. Military	0	1	1	1
	9	6	26	11

(The latter three were persons apparently in reserve or retirement status.)

The full strength of the legislature is 236 members — 59 senators, 177 representatives. The 52 covered above represent one-fourth of the Senate and one-fifth of the House. It is not possible to determine the number of first-term members who also may be in the double-dipping category.

This information is based on the responses to Item 7 of the Statement of

CONRAD P. RUTKOWSKI
Associate professor of political science at Sangamon State University, he previously taught at Fordham and the City University of New York — Hunter College.

The specific language reads: 'No member of the General Assembly shall receive pay from another governmental entity during his term of office as a legislator'

Economic Interests which public officials must file annually with the Office of Secretary of State (county clerk in case of local officials), supplemented by the 1973-74 *Illinois Blue Book* biographies of legislators.

Item 7 of the disclosure statement requires the individual, under oath, to "List the name of any unit of government which employed the person making the statement during the preceding calendar year other than the unit of government in relation to which the individual is required to file." The statements examined were those which were filed between January 1 and April 30, 1975, and the count above is based only on legislators who served in the preceding (78th) General Assembly. Thus, the answers legislators gave to Item 7 referred to calendar 1974 — the year in which these individuals became legislators. New legislators were excluded from the count because they did not take office until 1975 and could have held another public job during 1974 without being in the position of double-dipping.

New statements covering 1975 are due to be filed on or before April 30 this year, but these will not be available for this article. And the *Blue Book* which will carry biographies of incumbent legislators will not appear until midsummer or later.

The past debate

The issue of double-dipping and dual officeholding was debated six years ago by the Sixth Illinois Constitutional Convention. A strong restriction on double-dipping coupled with a ban on dual officeholding was proposed by the convention's Legislative Committee as a majority proposal, but it lost to the present provision which was submitted by a minority of the committee.

The double-dipping proposal that lost at the convention read: "No member of the General Assembly shall receive compensation and allowances as a public employee and as a member of the General Assembly." The defeated provision on dual officeholding read: "No member of the General Assembly shall hold any other elective or appointive office."

This language meant that: "To be seated as a member of the General Assembly, a member who is a *public employee* would necessarily have to take a leave of absence, if possible, or resign from his position as a public employee," according to the majority committee report.

"The intent of the language is to preclude dual or joint salaries at any time during a legislative session. For example, if the General Assembly were in session during January, February and March, a member who was a policeman could not receive any salary except his legislative salary. But when the session concluded at the end of March, he could resume his salaried position as a policeman while ceasing to receive his salary as a legislator," stated the report.

During floor debate, majority committee spokesman Anthony M. Peccarelli of Wheaton stated, "The purpose of the double-dipping ban was to eliminate the possiblity of being paid more than once from tax funds." On the dual officeholding proposal, he said that allowing individuals to hold two offices at once limits the number of persons in public service and suggested that "public service should be broadened and more people should have the opportunity [to hold office]."

Pecarelli said the combined ban on double-dipping and dual officeholding was intended to eliminate the possibility of divided allegiance — the old problem of having to serve two masters. He explained, however, that the ban on dual officeholding would not apply to holding a second public position which was only ministerial in nature. The intent was to eliminate one person from holding two positions in which substantive policy decisions might be made. But, even if a legislator held a second government position that was ministerial, he couldn't get paid for both jobs at once, according to the proposed language.

The majority proposals lost. A convention vote of 57-33 killed the language providing for a ban on dual officeholding. The motion to strike was made by Delegate John L. Knuppel, now a state senator (D., Virginia). The provision which is now part of the Constitution came from four members of the Legislative Committee as a minority proposal. It won 46-36 over the majority's double-dipping ban language in a motion for substitution.

The delegates who submitted the successful minority proposal included three of the four Legislative Committee members from Cook County: Clifford P. Kelley, William J. Laurino (now a Democratic state representative), and Frank D. Stemberk. The other was Mary A. Pappas from Lake Bluff in Lake County north of Cook County.

The minority stated in its report that it was not their intent that "a legislator receive a 'double, dual, or joint salary,' (that he receive compensation for public employment for the same day that was utilized performing official legislative functions), but that he only be compensated by the employing local governmental entity for days that were used actually performing his duties as a public employee notwithstanding the fact the General Assembly may be in session but recessed."

The minority argued that such factors as the increased cost of living, the decline in real purchasing power, and an unhealthy economy were good reasons to allow individuals to hold second jobs in order "to assure a decent standard of living for . . . dependents." Another point the minority made was that since the General Assembly does not meet all of the time, nor in fact for the entire calendar year, an additional job would not impair a legislator's ability as a public official.

The minority said that the "purpose is to simply exclude a public servant from receiving compensation as a legislator and for his extra-legislative position on the same day, which is the primary intent of both majority and minority proposals.... A public servant that possesses the qualities to be a good legislator, i.e., having expertise in some particular field of government or profession, would subject the employing political subdivision to an undue hardship if required to take a leave of absence for the duration of the legislative session in addition to unscheduled special sessions. To require resignation is unjust, particularly since a legislator's duties are not full-time. It is the

consensus of the minority, that the majority opinion, if adopted, would result in the people of the State being deprived of the services of many 'more than well qualified' potential legislators who are servants of the public and is, at best, a discriminatory provision against public employees."

Debated again

Now the issue is being debated again. The proposal from the Coalition for Political Honesty actually includes three amendments to the Constitution. Besides banning double-dipping, the group wants another amendment to prohibit legislators from voting on issues where there is a conflict of interest, including personal, family or financial interests; plus a third amendment to prohibit legislators from being paid their legislative salaries in advance. Legislators now can draw their pay two years in advance at the start of a new General Assembly, or can take it in two annual installments in January of each year.

The specific language to ban double-dipping reads:

"No member of the General Assembly shall receive compensation from any other governmental entity during his term as a member of the General Assembly."

The language of the Senate Joint Resolution Constitutional Amendment 56 on double-dipping reads:

"No member of the General Assembly shall receive compensation from a unit of local government, governmental body, or school district, other than for military service. This paragraph . . . does not apply to a member who is an elected official of a unit of local government, governmental body, or school district." In other words, this amendment would permit a legislator to serve as an elected official but not as an employee of government; as a school board member but not a teacher; as a city alderman but not a city employee, etc.

At the present time the Coalition drive claims the support of over 100 individuals and organizations. It remains to be seen whether or not this support can be translated into the needed signatures and majority voter approval. The chairman of the Coalition is David Ellsworth of Springfield, who is the assistant director of research and statistics for the Illinois Office of Education. The double-dipping ban amendment and the two related proposals were drafted by Patrick Quinn, secretary-treasurer for the Coalition. He once served as an assistant to Gov. Dan Walker.

Since the inauguration of the Coalition campaign, charges and countercharges have been hurled by the various participants.

One thing that the Coalition campaign has accomplished is a division of the participants into two factions. The state's lawmakers are being painted in terms which suggest — at least — venality and corruption. At the same time proponents of the amendments are being viewed and labeled as morally self-righteous, intent upon imposing their moral codes upon everyone else.

In a statement provided to the author, Coalition Chairman David Ellsworth argues that "the fact that so many legislators are on two public payrolls creates inherent conflicts of interest." Ellsworth further charges that "the Daley organization of Cook County uses high paying city and county jobs as rewards to those who are dependable regulars . . . . Providing such rewards for regularity increases the Mayor's control of the General Assembly, and as such has an impact on citizens throughout Illinois."

In response, opponents argue that the Political Honesty Campaign by its rhetoric and tactics assumes dishonesty and political corruption, and thus makes those who oppose the amendments appear to be in favor of dishonesty. They further point out that a case for holding two jobs and thus receiving additional compensation can legitimately be made in a period of combined inflationary and recessionary pressures.

Chances for success

If the backers of the double-dipping amendment and the other related measures secure the necessary signatures by May 2, they still need voter approval on November 2 to amend the Constitution.

The key to success, however, may well rely upon the kind of campaign conducted by the Coalition. Charges have already been made that the data released by the Coalition are less than accurate. On February 1, 1976, the Coalition released a list of double-dipping legislators. This was challenged on the grounds that a number of names had been erroneously included. It was pointed out that the Statement of Economic Interests that had to be filed required a listing of positions held for the *previous* calendar year, and that a number of legislators no longer held the positions involved — some of them even resigning prior to actually assuming office.

The language itself of the double-dipping amendment may prove to be a problem. The ban would apply only to members of the General Assembly. Critics may ask, what of other public officials within the state? Are they different from members of the General Assembly? Why are lawmakers being singled out? Clearly, the ban is extremely broad. Literature provided by the Coalition states:

"The double-dipping amendment prohibits legislators from all compensation from other governmental entities including contractual services. There are no exceptions because this is the only fair, no-loophole standard."

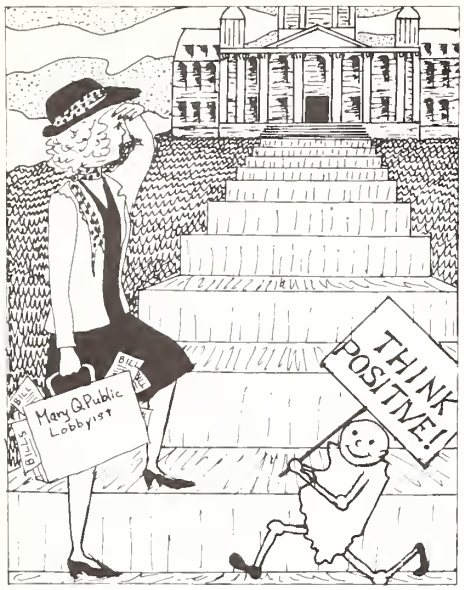
Thus the ban is intended to be total, comprehensive, and absolute. But, how absolute could it be? A case in point: for the purposes of filing income tax returns, the interest received from U.S. savings bonds is defined as personal income and thus subject to taxation. Surely some state legislators own such bonds. Could receiving such interest income be viewed as "compensation" from another governmental entity? The courts would ultimately have to decide these matters on a case-by-case basis.□

Leapfrogging the legislature

THE 1970 Constitution opens a way for citizens to propose constitutional amendments in spite of legislative opposition. All it takes is a petition signed by a number of voters equal to at least 8 per cent of the vote cast for governor in the last gubernatorial election — but obtaining this many signatures, 375,000 this time, is no mean feat. Such amendments are limited to structural and procedural subjects in the legislative article, and the petition must be filed with the secretary of state at least six months before the general election. For adoption, the amendment must receive the usual popular approval — 3/5 of those voting on it, or a majority of those voting in the election. This is the procedure the Coalition for Political Honesty seeks to use. If they succeed, it will be a first in Illinois' constitutional history for such a procedure.

By RICHARD LOCKHART

How to lobby: Convincing government that your bill should be enacted



Ingredients for success as a lobbyist are a good attitude, good bill, good sponsor, good timing, some hard work by proponents — and a certain amount of luck

Reprinted from Illinois Issues, December 1976

RICHARD LOCKHART
Head of his governmental affairs consulting firm, Social Engineering Associates, he has been a lobbyist since 1959. He publishes *The Illinois Political Reporter* and is the author of the article on "Illinois" in the *Encyclopedia Britannica.*

MOST OF THE bills submitted to the General Assembly do not pass. Some bills are altered significantly by legislative amendments; others negotiate each channel of the legislative process only to be vetoed or amended by the governor. What can private lobby groups do to convince government that the legislation they support should be enacted? Or that bills they oppose should be defeated?

First of all, even the finest lobbying effort can be stymied. Some legislative ideas simply have to wait for their time to come — others may never make it. But there are certain things that can be done by a private group to maximize the chances of effecting its legislative goals. The basic ingredients for legislative success are the right attitude, a reasonable piece of legislation, a good sponsor, hard work by you and the members of your organization, good timing and a certain amount of luck.

The attitude

Your group will not be successful if your attitude is negative. If you think that the legislative process is a fraud or that legislators are stupid, you will fail. You will fail because legislators, who are also politicians (no one should be ashamed to be known as either a politician or a lobbyist), have a pretty good understanding of human nature and are experts in detecting insincerity. If you do not believe in the integrity of the legislative process, you and your program will probably be rejected, regardless of the merits.

Before considering the "product," which is the proposal supported by your organization, it must be remembered that your bill is competing with many others for the attention of legislators. Sometimes organizations get so wrapped up in their own program that they do not notice the programs of other groups or individuals that may affect their own — until it is too late. Since over 5,000 bills are introduced every two years, most organizations must develop a monitoring system on all legislation which is introduced. More on that later.

The first task is to refine your proposal into very specific language and to determine where it should be placed in the statutes. There are only a few legislative maxims which have universal acceptance. One of them is that it is easier to amend an existing law than it is to draft an entirely new act. Repealing a law is more difficult than either of these courses.

The opposition

Next, it must be remembered that the Illinois legislature is composed mainly of individuals who have had prior legislative experience. This may have been on a county board, a school board, a city council or the General Assembly itself. They will not quickly pass legislation which brings about any radical change. They may do so in time, but not usually on the first go-round. This means that usually your legislative proposal should be drafted so as to minimize its controversial aspects. You will need to do this because controversy means that opposition of some consequence exists. Until this opposition can be won over or outmaneuvered, most legislators will be reluctant to support your proposal. They may fear that this opposition will manifest itself in their district at election time. They may also feel that the points raised by the opposition are valid. In any case, they will be reluctant to substitute a new law, whose impact cannot be measured, for a present law, which is known and probably accepted by most people.

Public benefit

When drafting a proposal, an organization must look at it in terms of the public benefit. It is not sufficient to assert that a bill will be good for your particular group. That usually is obvious to a legislator. What he really wants to know is: (1) How will the public benefit, particularly those in his district? (2) Who opposes the bill and — not as important — who supports it? and (3) Will it cost anything, and if so, how much?

There are those who think that legislation can be "slipped through" without serious scrutiny. While this does happen, it is more the exception than the rule. There are just too many people watching. In addition to the 236 legislators, there are more than 300 registered lobbyists who scrutinize new bills. Additionally, the large legislative staff and

various state agencies watch new legislation. The state agencies maintain their own lobbyists, otherwise known as "legislative liaison." They are exempt from the Lobbyist Registration Act, but like lobbyists, they represent a vested and identifiable interest. Consequently, they will resist "bad" bills and attempt to advance the interests of their agency. They are very careful monitors of the legislative scene.

The process

The machinery of the legislative process is both simple and complex. The simple or basic elements are described in the *Illinois Blue Book* and *Handbook of Illinois Government* (free copies can be obtained from the Secretary of State). But no single article can possibly describe all of the many variations of what has been called "the dance of legislation." Observing the General Assembly and its committees at work over several sessions is one good way of understanding the labyrinthine legislative process. Seeking the advice and counsel of legislators and professional lobbyists is another.

You will need to know if you must register as a lobbyist, so get a copy of the law (see sidebar below) and the required forms from the Index Division of the Secretary of State. Reporting requirements are simple. If you aren't getting paid for lobbying, you won't have to register or report.

You will also want to know what legislation is being introduced. This information can be obtained from the *Legislative Synopsis* and *Digest*, which costs $40 per year and is published by the Legislative Reference Bureau. It is mailed once a week while the legislature is in session. More frequent commercial reporting services are also available at a much higher charge. (For details on obtaining legislative information, see "Legislative Action" on page 27.)

The sponsor

Select a good sponsor for your bill. Like a good pitcher, a good sponsor may be 70 per cent of winning. Some tips on selecting the sponsoring legislator are:

1. Try to pick someone who is on the committee to which your bill is most likely to be referred.
2. Try to pick someone who has a high degree of credibility among his fellow legislators.
3. Try to pick someone from the majority party.
4. Try to pick someone who has some knowledge of the subject matter and background of your bill.
5. A good sponsor is one who can handle questions and amendments from the floor, speak concisely, and enjoys a good relationship with the leadership of his party.

Clearly, sponsors must be in sympathy with the purposes of your bill and willing to accede to your wishes with regard to amendments. They should be willing to develop a certain amount of knowledge about your bill and its implications. It is your responsibility, however, to supply sponsors with all relevant information, including the objections of opponents and other drawbacks.

Armed with background information, a well-written bill and a sponsor, you are ready to lobby. Basically, lobbying is communicating. Legislators are usually approachable, but they are very busy and they have many bills, numbers, sponsors and lobbyists all going around in their heads. To help them remember you and your cause, prepare a fact sheet with all of the relevant data set forth on one piece of paper. It doesn't need to be fancy, but it should be neat and concise. If you can, emphasize the relevance of your bill to the legislator's district. Do not forget to lobby with the staff of your sponsor. They are very important. Be persistent, but be courteous and realize that legislators may not give you an immediate commitment. Enlist allies and have constituents write. Make no threats and make no promises. Never deceive or embarrass a legislator. If he asks for more information, provide it. If he tells you that he is voting against you, don't get mad at him; there will be other bills in the future. Always be reasonable. You do not want to create enemies; you want to make friends.

The fictions

Some people think that it is necessary to wine and dine a legislator in order to get his attention and his vote. That is one of the more persistent fictions about lobbying. On the basis of my experience, it is without foundation. Others think that it is necessary to make campaign contributions. Although I personally believe in making small contributions at campaign times, I do not believe that it is essential to legislative success. Contributing is one way that I can demonstrate that I care about individual legislators, but it will not guarantee that they will vote my way.

It is wise to have constituents of the sponsor write to him and thank him for sponsoring the bill. In fact, it is always desirable for legislators to be commended for their support. The media and the public do not shrink from criticizing a legislator, but often forget that it is necessary to say "thank you for your help." When a legislator fails to support my position, I do not blame him, I blame myself for not doing a better job.□

What the law says about lobbying

THE LOBBYIST Registration Act, passed in 1969, is found in *Illinois Revised Statutes*, 1975, chapter 63, sections 171 through 182. The law requires certain persons to register with the secretary of state and periodically to report their expenditures for the purpose of promoting or opposing the passage of legislation. Those who must register are:

"Any person who, for compensation, or on behalf of any person other than himself undertakes to promote or oppose the passage of any legislation by the General Assembly or any committee thereof, or the approval or veto thereof by the Governor.

"Any person any part of whose duties as an employee of another person includes undertaking to promote or oppose the passage of any legislation . . . or the approval or veto thereof by the Governor."

However, the following persons are excluded: the media and their editors, reporters, etc.; persons performing professional services in drafting bills or rendering opinions on legislation; persons employed by state agencies to explain how legislation will affect their agency; legislative employees; persons with special knowledge who make "an occasional appearance for a registrant at the written request of a member of the General Assembly even though receiving expense reimbursement for such occasional appearance," and full-time employees of a church who appear solely for the purpose of protecting church members in practicing their religion. A separate law, the Governmental Ethics Act (found in chapter 127, beginning at section 601-101), permits a legislator to lobby without compensation. At the end of the 1976 spring session, 326 lobbyists were registered with the secretary of state.

Expenditure reports are required in January, April, July and following the adjournment of each session including special sessions. These are to list, under oath, all expenditures made for lobbying showing the name of the person or legislator to whom or for whose benefit the expenditure was made. But some types of expenditures need not be reported: expenses attending study committee meetings, "internal expenses" including office expense and research, personal expenditures for meals, lodging and travel, and expenditures for golf day tickets and similar events "to honor or to promote the candidacy of a legislator or candidate for the General Assembly."

The act forbids compensating anyone for lobbying activities on a contingent fee basis (that is, no payment unless the bill is passed or defeated, signed or vetoed, as the case may be). Violations are punishable as a Class 3 felony (1 to 10 years in prison), a fine of not more than $10,000 for a corporation, and disqualification to lobby for a three-year period. Lobbying registrations and reports are public record and may be inspected in the Index Division, Office of the Secretary of State, Room 109, State House.

By DAVID KENNEY

Reprinted from Illinois Issues, November 197

NO *CUMULATIVE*

The great debate over Illinois' unique

WHEN VOTERS go to the polls in Illinois in November, they will again be confronted with a scheme called "cumulative voting" for electing members of the Illinois House of Representatives. Each district elects three representatives and each voter is allowed three votes, which may be divided among two or three candidates or all be given to one. Giving all three votes to one representative is called "the bullet vote." The system is unique to Illinois. In 100 years no other state has cared to adopt it.

Not understood by voters

Cumulative voting is not understood by most voters and creates serious confusion among them. It prevents competition for House seats and thus reduces the amount of attention which might otherwise be given to state issues. It slights the legitimate concerns of racial, ethnic, religious and other groups. Cumulative voting creates rivalry and antagonism *within* parties and between fellow partisans which often exceeds that *between* the major parties and their candidates. And yet, like any system long in effect, it has created a large amount of vested interest and mythology which keeps it in operation even though its total working is highly damaging to the public well-being.

Cumulative voting was adopted in Illinois in 1870 at a time when a number of deep divisions — political, economic, social and cultural — all ran along a single line, that separating the north from the south. The original purpose of cumulative voting was to reduce the severity of that north-south split by insuring the election of some Democrats from the Republican north and some Republicans from the Democratic south. The inner logic of cumulative voting was so compelling that it accomplished in its early years exactly what its originators intended. As basic divisions within the state changed, however, and the need for cumulative voting dwindled, a band of supporters sought to have it continued indefinitely.

Cumulative voting worked best for the express purpose for which it was intended when the number of nominees in each district did not exceed three. Consequently, the legislature allowed the parties to limit the number of their candidates; and more often than not, over a long period, the total number in both parties was three. The results: no contest, no issues, and no public debate. That meant, in most cases, a free ride for incumbents. Because of this fact, it is understandable that incumbents have usually favored cumulative voting.

The system improved in 1970

Cumulative voting was one of the hardest fought issues of the Constitutional Convention of 1970. The dispute was not resolved and it was decided to put the question to a statewide referendum. The voters chose to retain the traditional system. It had the backing of Gov. Richard B. Ogilvie, Mayor Richard J. Daley, "Con Con" President Samuel W. Witwer, both political parties, the principal Chicago newspapers, most of the politicians around the state, and the Independent Voters of Illinois. What is surprising about the referendum is not that cumulative voting won, but that the vote against it was as great as it was. It was beaten in the 101 downstate counties, and prevailed by only a 5 to 4 ratio statewide.

But at "Con Con" there was the conviction that even if cumulative voting were retained, elections without contests had to go. Consequently, the 1970 Constitution provided that no party could limit its nominees in a legislative district to fewer than two. The idea was to insure a meaningful contest among at least four candidates for the three House seats in each district. There were at least four candidates in most districts in 1972 and 1974, although not each one of the four received his party's blessing in some districts. This has meant more attention to issues and campaigning, since one of the four is fated to lose, and no one of the four can be sure who it will be.

Still a faulty system

In spite of the significant improvement in the cumulative voting system which the 1970 Constitution mandated, serious defects remain. Voters do not understand the system, a situation which candidates, especially incumbents, are not unduly worried about. Incumbents plan on receiving "the bullet vote" from their strongest supporters. Some voters who have a basic understanding of how the system works are not aware that it is also used in the primary election, and others mistakenly believe that the principle applies to other offices as well.

Cumulative voting severely limits the number of meaningful contests in the election of House members. At present there is no more than one contest in each district for the three House seats. And in some districts not even that. There should be a meaningful contest for each House seat instead of only one in three. Single member districts with one-to-one contests in each would do much to elevate the level of public discourse upon election issues.

Perhaps the most serious defect of the

DAVID KENNEY
Professor of political science at Southern Illinois University at Carbondale, he was a delegate to the 1970 Constitutional Convention. He is now a commissioner of the Illinois Law Enforcement Commission and president of the Carbondale Library Board.

Continued at top of page 26.

By REP. ARTHUR A. TELCSER

YES

VOTING ☐☐☒

system of electing legislators

THE 177 MEMBERS of the Illinois House of Representatives are elected every two years by a unique electoral system called "multi-member districts with cumulative voting." It is called "multi-member districts" because three representatives are elected from each of the 59 legislative districts. It is often called simply the "cumulative voting system," because its unique feature is that every voter has three votes to cast which the voter may divide equally between two candidates (giving each one and one-half votes) or divide equally among three candidates (giving each one vote) or "bullet" for one candidate (giving him all three votes).

The cumulative voting system enables voters not only to support a candidate, but to give *strong* support to a candidate they feel strongly about. The Illinois system is the only one which allows a strong minority to have a strong voice in government.

Guarantees a contest

In recent years some political scientists and others have attacked this system, chiefly on the grounds that it is unrepresentative and encourages "game playing" or "sweetheart deals" between political parties to the detriment of the people. Nothing could be further from the truth. Whatever problems the system has are essentially human flaws which would exist under any other system as well. The basic structure of the system remains sound and, I contend, provides for a more representative government in Illinois.

This unique system is a product of the post-Civil War era in Illinois, when the overwhelming majority of Illinoisans voted the straight party ticket. Most of the southern half of the population voted for Democratic candidates, and most of the northern half, including Cook County, voted for Republicans. To give minority voters in each half of the state a chance to elect their candidates, and to encourage each party to develop a statewide, rather than a sectional outlook, the 1870 Illinois Constitution provided for a cumulative voting system with three representatives from each district. Present arguments against the system center on the point that a system created in response to a condition which fortunately no longer exists — rabidly sectional partisanship — cannot have any value today. In truth, while geographical sectionalism is no longer as significant as it was a century ago, there are still other minorities — based on political philosophy, race, ethnic group or occupation — which are often very strong.

Moreover, the cumulative voting system which has been in effect since 1972 — thanks to the 1970 Illinois Constitution — is significantly better than the original. The most significant difference is that the "sweetheart deals" between party leaders have been discouraged as far as possible. The sweetheart deals which opponents are so fond of pointing to as an abuse were the informal agreements between party leaders to run two candidates from one party, but only one from the other party, in an election.

Section 2 of Article IV of the new Constitution virtually eliminates those "deals" by stating that a party cannot limit its candidates nominated in March to fewer than two candidates. This virtually guarantees a four-way contest for three seats, since a party which fails to nominate two or more candidates allows a "stray" candidate to be written in as a party nominee.

Let's look at the 1974 November election: of the 177 House seats up for election, there were contests in *all* the districts. The only uncontested 1974 legislative race was that for the 22nd district Senate seat — which is elected on a single-member district basis.

The question, therefore, is not whether the *old* cumulative voting system was better for the people than a single-member district arrangement, but whether the *new* cumulative voting system is better than a single-member district system. I think that the answer is definitely yes. Let's look at the positive aspects of the new system, which even ardent opponents find hard to dispute.

Minorities represented

In Illinois the mere fact of election from multi-member districts does not guarantee minority representation because there are still areas of our state where party affiliation plays a strong role in the low-visibility races. The Cook County Board is divided into two districts — Chicago and suburban Cook — for the election of commissioners. In theory, 10 Chicago Democrats run against 10 Chicago Republicans and 6 suburban Democrats run against 6 suburban Republicans. In fact, the Democratic slate always wins in the city and the Republican slate wins in the suburbs. In spite of this, there are Republican representatives in the legislature from Chicago and Democratic representatives from suburban Cook. Why? The difference is cumulative voting.

There are different kinds of minorities competing for representation in the

Continued at bottom of page 26.

ARTHUR A. TELCSER
A native of Chicago, he is serving his third session in the leadership and fifth session in the Illinois House. He is a practicing pharmacist, active in civic and political organizations. Rep. Telcser has sponsored bills aiding the Spanish-speaking citizens of Illinois, handicapped, corrections, recreation, election and prison reform.

Continued from page 24.

NO

By DAVID KENNEY

present system is the way in which it creates tension and discord between fellow partisans. Each Republican and Democratic candidate knows that if the contest is a real one, he or she is actually more in competition with the other candidate of the same party than with the candidates of the other party. Intraparty strife and dissension is promoted. Each candidate goes his own way, seeking the "bullet," and too often denigrating fellow partisans in order to achieve it.

False claims

Supporters of cumulative voting attempt to make much of their claim that it fosters "minority representation." This notion lacks credence since neither party in Illinois can claim to be a minority party. What cumulative voting really does is to guarantee the weaker of the two major parties in each district one representative out of three, whether it deserves that degree of representation or not. That is a far cry from meaningful minority representation. Racial and ethnic groups, which have a much better claim to the minority role, generally are grouped into residential neighborhoods. Thus, a system of smaller districts, each electing one representative, would give true minorities a much better chance at meaningful representation and would greatly sharpen the discussion of issues. This could be accomplished by dividing each legislative district into two or three subdistricts, with one representative elected in each.

Most of the other arguments for cumulative voting are narrow or partisan ones which claim merit for it because it produces particular effects, such as the claim that X or Y, for example, could not win if the system were abandoned. There is now no way to know, of course, whether or not X or Y could win in one-to-one contests in smaller districts. Since the individuals named are usually outstanding legislators, it is probable that they could win on their merits as well as on the free ride that cumulative voting gives them. We'll never know until we try.

Cumulative voting represents an effort to cut and cramp a meritorious system — the clash of personalities and ideologies in the free market place of political campaigns and elections — to fit the ambitions and needs of particular individuals, parties and pressure groups. The time is long overdue for Illinois to give up a nineteenth century practice, which was designed for obsolete conditions and perpetuated because of the advantages it has given to the few at the expense of the many.□

Continued from page 25.

YES

By REP. ARTHUR A. TELCSER

House. The first is minority party representation, for which the cumulative voting system was initiated. Although party affiliation is ebbing, there are still areas of Illinois where party labels are strong factors in electoral success. In those areas, the minority's representative to the Illinois House is often the minority's only elected official in that area, and is the nucleus of the party's organization. Without the reasonable hope of gaining one legislative seat, the organization might well collapse.

A situation not often appreciated is that cumulative voting, while virtually guaranteeing contests, also ameliorates severe shifts in House membership in landslide years. Let's compare the House and the Senate in the last two elections. It was a "Republican" year in 1972 at the national level, but there was no landslide at the legislative level in the states. Illinois reflected this mildly Republican trend: each house of the General Assembly was controlled by Republicans with a one-vote majority. In 1974, however, there were Democratic landslides in state legislatures all over the country. In Illinois the Senate reflected the landslide more than the House did — 65 per cent of the Senate and 57 per cent of the House were Democratic. This does not mean that the victorious party was cheated out of the fruits of its victory, however, since the Democrats are clearly the majority in both houses. The point is that the new minority party, the Republicans, has a better chance to be heard in the House than in the Senate.

The modern "minority" is more likely to be a racial, ethnic or religious minority. Such a minority, if it is reasonably well organized around its common identity, can often elect a representative, but almost never a senator. For example, in biracial districts in Chicago, the blacks are often a sizable minority. When the black population is substantial — say, 25 to 30 per cent — it is highly likely that one of the three representatives will be black. There will not be a black senator, however, unless the district is predominantly black.

The value of cumulative voting as an aid to electing women legislators can hardly be doubted. Eight districts have at least one woman representative and two districts even have two women representatives. By contrast, only three legislative districts have elected women as senators.

A third type of minority is the philosophical or issue-oriented minority. In this regard, we can see the value of the cumulative voting system as a means of securing minority viewpoint representation within the majority party. I have noticed that a strong majority party often has a liberal wing and a conservative wing, and that the party's two state representatives tend to reflect that division. If you look at the votes on the Equal Rights Amendment, you will find that often one of the majority's representatives votes for the ERA and one against. Each faction of that constituency is represented.

A fourth type of minority representation is the *geographical* one within each party. For example, Chicago Republican representatives have always supported aid to the Chicago Transit Authority as much as Chicago Democrats have. This support has given the CTA a hearing in the Republican party. On the other side of the aisle, downstate Democrats can speak of agricultural interests in a party dominated by urban Cook County.

Produces better legislators

I am at a loss to understand why some who profess to be for "good government" support single-member districts for the House. They seem to follow pure academic theory without regard to the realities of Illinois. The Illinois League of Women Voters, for example, opposes cumulative voting while giving their highest ratings to representatives whose presence in the legislature depends upon cumulative voting. The question is simply which system produces better legislators — not to represent the parties, but to represent the people.□

Reprinted from Illinois Issues, December 1976

Legislative Action

How to follow bills during the session

IT'S NOT ALWAYS easy to find out what is going on in the Illinois General Assembly. However, there are some basic sources of information that help bring some semblance of order to the surface chaos and confusion.

The two most basic sources of information are the daily House and Senate Calendars and the *Legislative Synopsis and Digest.* The calendars list the bills which are ready for action by the full House or Senate. Only the bill number and title are listed in the House Calendar, while the Senate Calendar gives a somewhat better description, although it is still difficult to know from these brief descriptions what the bills really contain.

The bills on the calendars are listed by the stage at which they are in the legislative process, such as "Second Reading," "Third Reading," or "Concurrence." Second reading is the amendment stage, while third reading is the point at which a final vote on passage is taken. A good, brief description of the various steps is found in the *Handbook of Illinois Government,* which is available free at the information desk in the Capitol.

The *Legislative Synopsis and Digest* is the single most valuable source of information. It is published weekly by the Legislative Reference Bureau in paperback volumes; an annual subscription costs $40.

The *Digest* lists bills and resolutions in numerical order, giving the sponsors, a one paragraph description of the bill and each amendment adopted, and a chronological listing of each action on the bill. Indexes are included which refer to bills by sponsoring legislator, topic, and section of the statutes they amend. Thus it is an invaluable reference tool.

The *Digest* is prepared by computer. The updating and processing of the computerized information is handled by the Legislative Information Systems. Video terminals are available to the legislators and staff with the same information as the *Digest* but updated within an hour or two after each action.

Since the *Digest* is printed weekly, it often rapidly becomes outdated, particularly near the end of the session when legislation moves very quickly through the process.

The same information is also provided by the *Daily Legislative Report* on a more timely basis, although not as well organized. It is published by State Capitol Information Service, Inc., a private organization. A subscription costs about $300 per year.

If more information than these brief descriptions is needed for a particular bill, copies of the bills may be obtained at the House and Senate Bill Rooms in the Capitol.

In order to actively follow the legislative process, you also will need information about committee hearings. This is the point in the process where citizen participation in the legislative process is maximized. The schedule of committee hearings is listed at the end of the daily calendars generally at least one week before the hearing. This notice will either contain a numerical list of the bills which will be discussed or a brief description of the subject area the committee will be considering. A hearing notice is also posted on a bulletin board near the House and Senate chambers. Last minute changes, which are frequent, can be checked there.

Those interested in following a particular bill should contact either the chairman of the committee or the sponsor prior to the committee hearing. This can provide additional information about amendments which may be proposed during the hearing and some idea of whether the committee views the legislation favorably or not.

Several other sources of information which are generally less useful are also available. The House and Senate Journals give a formalized record of the proceedings of the two chambers. Most of the preparation of the journals is also computerized, but printing is generally delayed two to three weeks after each daily session.

The most useful information in the journals for general purposes is the full text of all amendments, although these are also generally available in the bill rooms, and the record of each roll call. The roll call records are useful in compiling voting records of legislators on specific pieces of legislation.

Full transcripts of the proceedings of the House and Senate are also kept by the clerk of the House and secretary of the Senate. They are available through the Index Division of the Secretary of State. These are copious records, but may be useful in locating specific points in debate on the House or Senate floor.

Handbooks which contain the detailed rules of the House and Senate become available from the clerk of the House and secretary of the Senate after rules have been adopted by each new General Assembly. These also contain names of the members on the various committees as well as occupational information about members. Biographical information can be obtained in the *Illinois Blue Book*, available free through the Secretary of State. This is not published until late in the second year of each General Assembly but a book with the biographies of new members is issued early in each session.

The Illinois Legislative Council, which provides research to members of the General Assembly, also publishes two useful documents, the *Illinois Legislative Directory* containing addresses and phone numbers for legislators, staff, and legislative commissions, and the *Provisions Concerning Continuing and Temporary Commissions with Membership,* which outlines the functions, authority, and composition of the numerous legislative commissions.

Special interest organizations such as the Taxpayers Federation and the state Chamber of Commerce may also provide useful information.

These basic sources of information should enable even the novice legislative observer to take an active part in the legislative process./ *K.E.M.*□

By BILL MILLER

Reprinted from Illinois Issues, February 1976

(Dixon was elected secretary of state in the 1976 general election and took office in January 1977.)

Alan Dixon

Now state treasurer, he aspires to become secretary of state. He predicts we will get by this fiscal year without raising taxes because he expects an upswing in the economy. He would send public aid frauds to jail Campaign Financing Act makes it difficult for him to get contributions from Republican friends. They are embarrassed to be listed as helping a Democratic candidate

BILL MILLER
Associate professor and director of the Public Affairs Reporting Program at Sangamon State University, he was a reporter for 25 years and received over 20 Associated Press News Awards and the national Edward R. Murrow Award for investigative reporting.

ALAN J. DIXON entered public life 27 years ago when he was elected police magistrate in his home town, Belleville, at age 21. Since then he has spent 12 years in the Illinois House, eight years in the Senate, and has been state treasurer the past five years. Last December the Democratic state central committee endorsed him as the regular organization candidate for the Democratic nomination for secretary of state in the March primary. The interview took place prior to this endorsement.

Dixon is recognized as an able debater and claims that most of the significant legislation passed in the General Assembly during the 20 years he served was authored either by himself or by former Senate Republican leader, W. Russell Arrington, of Evanston. Dixon is the 57th treasurer of Illinois and the only state elected official to have served in all three branches of government — legislative, executive, and judicial.

Miller: Treasurer Dixon, can Illinois get by the next two years without a tax increase?

Dixon: We can get by this fiscal year that we are in now, ending June 30, 1976, without a tax increase. Our projections show that we will finish that year having balanced the budget, paid all our bills, with a modest surplus balance in the treasury. Every major, recognized economist in the country says that we are going to enjoy a very decided upswing in the economy in the second half of this fiscal year [January through June]. So, I would say that we'll be able to get by the succeeding fiscal year [July 1, 1976 through June 30, 1977] without any tax increases because an improvement in the economy will mean that we'll have two distinct rewards: first, substantial new income from the income tax and sales tax; second, substantial reductions in expenditures for public aid.

Miller: An alternative to a tax increase could be cutting state spending. Can you pinpoint any areas where you feel the state is now overspending?

Dixon: I think we could have made very substantial improvements in our budgetary circumstances if the governor, early on, in January and February [1975] had been listening to Alan Dixon, the state treasurer, and George Lindberg, the comptroller, who were advising him and the legislature about the fact that we were going to have a tight fiscal situation. If he would have reordered his priorities then, he could have done a great deal to bring us in an austerity budget that would have obviated a lot of the problems that we have now. There are certainly places in his budget where, in the judgment of most of us, the appropriations are excessive. For instance, I think the Bureau of the Budget has to be condemned for the miserable job it did with respect to our budgetary practices this year, even with all the cuts, including the meat-axe six per cent cut across the board by the governor. Yet, its appropriation is up 65 per cent. The Department of Revenue is up substantially. The original budget contemplated 4,450 new jobs, but how many of them will actually be put into the operational program this year, in view of the reductions in the budget, I don't know. But, most of us are pretty confident that at least 700 or 800 new jobs will be created in the Department of Transportation, most of which will have political characterizations. I think you could go through the budget and find a lot of other excesses. I think, though, that the real big chunks for education and public aid are pretty well committed for the year.

Miller: What could be done that is not now being done to curb burgeoning welfare costs?

Dixon: More can be done. I can't understand why this administration has never really made a conscientious effort to reduce fraud in the public aid program. However small the percentage of fraudulent recipients may be — and there is a tremendous debate about this — it is offensive to ordinary working people who have to earn their own living. Whether you are a Republican living in Kenilworth or a Democrat living in Taylorville, you are *for* taking care of our very needy, hungry people and you are *against* anyone on the rolls who isn't deserving. What you really need is strict prosecution of every fraud case with criminal penalties. Now the department [Public Aid] says, "Oh, we don't want to do that because there is only a couple hundred dollars involved and it costs more to prosecute than you can recover," and, of course, that is true. But I would point out that in the Internal Revenue Service it costs more to prosecute a person who cheats on his income tax than the amount you recover, but it has an effect on the population generally of making everyone scared stiff to cheat on income tax returns because they know about the very severe penalties. If this were true in public aid — if every fraud case were vigorously prosecuted and these people were jailed and penalized — you would have a good result.

Miller: The new state Constitution mandates the abolition of the corporate personal property tax by 1979. The General Assembly, so far, has taken little action to implement this. Do you feel the legislature has been lax and should start moving in this direction?

Dixon: I don't see any reason to introduce that problem too early into the other problems we have now. However, I recognize, as do most who understand government, that it's a problem that is going to occur shortly. You would have to observe that we can't afford that revenue loss. Something is going to have to be done to supplant it.

Miller: Of course, that revenue goes to local governments.

Dixon: That is correct. But you see the local governments have already lost the personal property tax in reference to individuals, and it has been a tremendous revenue loss for them. Now they are suffering from the consequences of the failure of the governor to recognize the commitments made by the General Assembly and the governor to the full funding of our schools. So, again local governments will have to look for other revenue at the local level. What I am trying to suggest is that you probably cannot abolish another revenue-producer at the local level without giving local governments some sort of authority to supplant that revenue. What is going to happen, I don't know, but they are going to have to replace that lost revenue; they can't continue to lose revenue and continue to supply the same services.

Miller: You get what is normally referred to as a "good press." Do you consciously play to the press?

Dixon: No, I don't. But I consciously cooperate with the press and everybody else. On the whole, I've received a good press although I get my knocks, too. From time to time I get a bump or two when they are critical of me. One of the things I've always tried to do in public service with the press or anybody else is to be understanding about the criticism with the full knowledge that I'm not perfect and I do make mistakes. When people criticize my mistakes I should accept that in good grace and I do. When they are kind to me, I say "thanks." I think that's the way to be. I don't curry the favor of the press, but I do know the names of the people in the media and I enjoy their company on a one-to-one basis.

Miller: Because of the Illinois Campaign Financing Act, is it harder to get campaign contributions?

Dixon: Absolutely, without any question or doubt, and I have the classic example. I happen to enjoy a very substantial amount of support among Republicans in the state due to the fact that I've been state treasurer and have come to know a great many bankers, professional and business people all over Illinois. Many of my Republican friends would like to help me. They say, "Can I give you this contribution?" I say, "Now, you understand, it has to be reported, name, address and amount," and they say, "Oh, my goodness, it will be embarrassing to me with my friends because I'm a known Republican." I say, "Well, I'm sorry, it's one of the problems we have in disclosure." Of course, these are very honorable, decent people. It's not a question of them being ashamed of giving me the money. It's the fact that when they go to the cocktail parties at their country clubs, and wherever they go in their business life, people will say, "Well, we thought you were a Republican and here you are giving a contribution to Alan Dixon for $1,000." So, it has had a very, very substantial impact on the amount of campaign contributions I am personally receiving.

Miller: Does it upset you so much that you would favor scrapping the act?

Dixon: Oh, no. I never favor scrapping laws that give the people the right to know what is going on.

Miller: Should there be a limit placed on the amount a candidate can spend?

Dixon: I favor that; although I think it has to be a reasonable limit or you defeat the purpose. You have to have a committee — maybe a joint committee of both the House and Senate — to determine what would be a fair amount. A gubernatorial campaign in a big state like Illinois is expensive. I've run for state treasurer twice, and each time I have spent approximately $300,000. Candidly, you can't run decently for much less than that. I'm talking about a very minimal, a very low-profile television campaign where you buy advertising time during programs like the morning *Today Show,* which is relatively cheap. It has a limited audience but a good audience to reach: intellectually superior people who are motivated to participate. The idea is to get a big bang with your buck, to make smart buys in the television market, to use limited billboards and radio and to use almost no newspaper ads except when newspapers endorse you and you reproduce the endorsements. To run for state treasurer or comptroller takes about $300,000. To run for attorney general takes a little more; to run for secretary of state takes a lot more — perhaps double or triple the $300,000. To run for governor takes a lot more than that. You have to be reasonable about the amount or you induce cheat-

ing on the part of people who are not honorable. I regret to suggest there are some people who would take a chance, but I don't think we want to encourage them. Prohibition didn't work because people were thirsty, and if they were going to have a drink, they were going to have a drink. If something won't work, what's the use of having it?

Miller: How do you feel about public financing of state campaigns?

Dixon: I favor that. I would prefer never having to go to my friends for contributions to a campaign, particularly since I think anyone who is honest has to recognize the fact that many who contribute do have a selfish motive. If you were to analyze all the dollars that go into political campaigns, I think you would find that the vast majority of contributions have some kind of selfish motive. Now, I don't say venal motive; I say selfish motive in the sense that the participant who is making the contribution hopes to gain a position of relative importance vis-à-vis the candidate or the public officeholder. I would favor a state-supported program to underwrite campaigns, but it would need careful analysis to take care of the problems of primaries and of determining who is a recognized candidate.

Miller: Turning now to the General Assembly, do you still hold to your earlier position that we should return to biennial sessions?

Dixon: I think [going to annual sessions] has been the single greatest mistake that has taken place in government in my 25 years of public service.

Miller: Should we retain annual sessions but limit the even-year meetings solely to budgetary matters?

Dixon: I have modified my position to that extent. We now have a $10 billion plus budget for one year, and that large a budget can't be ignored during any year. What I am now suggesting is a modified type of biennial session. One year would be for a session to consider all matters, and the other year would have a short session — say 90 days — to consider only fiscal and budgetary matters with no exceptions. The governor would still have the right to call special sessions and so would the legislative leaders. Alan Dixon still believes in "Dixon's Law" which is that the cost of government increases in *direct* proportion to the number of days the Illinois General Assembly is in session.□

Reprinted from Illinois Issues, February 1977

Illinois Supreme Court

Attorney general vindicated

THE ATTORNEY GENERAL is the only state officer authorized by the Illinois Constitution to institute and prosecute cases before the Pollution Control Board, the Illinois Supreme Court decided in *People ex rel. Scott* v. *Briceland,* handed down December 3. The opinion, written by Justice Ryan, affirmed a judgment of the Sangamon County Circuit Court, and held unconstitutional a section of the Environmental Protection Act authorizing the Environmental Protection Agency (EPA) to prosecute actions before the board.

The question was one which was explored earlier in *Ilinois Issues* (Rubin G. Cohn, "Attorney General and Governor fight over control of lawyers employed by executive agencies," Jan. 1975, p. 9*ff*) and the opinion cited the article by Cohn, who is professor of law at the University of Illinois. The court relied heavily on Constitutional Convention debates in deciding that there was no intent to change the interpretation of the attorney general's broad powers as "the only officer empowered to represent the State in any suit or proceeding in which the State is the real party in interest."

The attorney general, who had instituted the case against EPA, had also sought to hold Richard H. Briceland, EPA director, and Jeffrey R. Diver, deputy director, "personally liable for all litigation costs and expenses expended by the EPA for the prosecution of enforcement cases before the Board." This the court refused. "It is well established that a public officer is immune from individual liability for the performance of discretionary duties undertaken in good faith .... The defendants cannot be held liable for such an exercise of discretion which was made in their official capacities." The court also said the EPA and its officers were entitled to counsel other than the attorney general in this case testing EPA's legal representation authority.

The attorney general also figured in another case, *Fuchs* v. *Bidwill,* decided on December 3. Fuchs and Businessmen for the Public Interest had sought to recover from legislators profits which they allegedly made from the purchase and resale of race track stock made available to them in return for influencing passage of legislation favorable to racing. The court, in an opinion by Justice Goldenhersh, held that only the attorney general had authority to bring a suit of this kind and "the public interest will not be served in permitting persons, without limitation, to institute actions of this nature against public officials when the Attorney General has declined to act." In dismissing the case, the court affirmed the original holding of the Sangamon County Circuit Court and reversed the Appellate Court.

Justice Schaefer was joined by two other justices, Kluczynski and Crebs, in dissenting, saying "in our opinion the public interest clearly requires that the merits of this claim be decided. Instead, the majority avoids that important decision by giving the Attorney General the exclusive right to bring this action — a right which he has not claimed and does not want." The case involved sale of stock by Marjorie Lindheimer Everett, who was also involved in the distribution of stock to the late Gov. Otto Kerner in a case in which Kerner was convicted. The stock was sold at $1 per share to the legislators, it was charged, and repurchased at prices ranging from $3 to $7 per share. The suit alleged that their profits ranged from $6,000 to $294,000.

Reprinted from Illinois Issues, April 1977

The state of the State

Reorganizing executive agencies

REORGANIZATION of the state's executive departments and agencies under control of the governor may not directly stop the spiraling costs of the state's budget. But, if Gov. James Thompson and the General Assembly can agree on some means of restructuring the maze of services and responsibilities of existing agencies, the governor might be able to manage them better and the General Assembly might be able to evaluate the appropriations they pass to fund state services.

A basic reason for reorganizing the executive agencies should be to make it easier to find out who does what in state government. There are now about 65 major agencies plus almost 250 small agencies, boards and commissions which report to the governor. There are overlapping responsibilities. When a major problem arises, like the energy crisis, it is difficult for the governor to quickly get information and recommendations for action because the responsibilities for energy are so fractured.

The Illinois Task Force on Governmental Reorganization presented its recommendations (*"Orderly Government"/ Organizing for Manageability,* November 3, 1976, xi + 344 pp) to the governor after his election in November. Thompson has made no commitment to follow any of the suggestions, but he has hired Paula Wolff, a staff member for the Task Force. She is responsible for Thompson's reorganization plans. The Task Force report includes general chapters which read like a primer for new governors. Its specific reorganization proposals are listed below, but the report is full of alternatives and methods of implementing changes, from a constitutional amendment to executive orders.

1. Consolidating most agencies into 14 major departments reporting directly to the governor and two education agencies headed by boards appointed by the governor.

2. Eliminating intermediate governing boards under the Board of Higher Education in favor of individual institutional boards.

3. Eliminating most statutory boards which perform administrative-type functions, unless required under federal law, in favor of advisory boards to department heads.

4. Transfer of independent quasi-legislative and adjudicative boards to a related major department which would provide administrative support.

5. Transfer of all bond issuance and debt retirement responsibilities to an Office of Planning and Budget, with administrative functions of bonding authorities assigned to a related major department.

The key agency identified by the Task Force as the centralized administrative office for managing the spending of all departments is an expanded Bureau of the Budget (BOB), which Gov. Richard B. Ogilvie established. The first appointment Thompson made was Robert Mandeville as budget director.

Besides its specific proposals, the Task Force set down the following seven axioms "which apply generally to Illinois reorganization . . . . designed to improve management by attempting to apply, wherever possible, the principle of singleheaded administration."

While it encouraged use of advisory committees, the Task Force recommended they be appointed, not by the governor, but by the director of the agency which the group will advise. This would also put the responsibility of the agency directly on the shoulders of the agency director.

Licensing of all professionals should be done in one regulatory agency. The examination and promulgation of rules can be done by advisory boards composed of qualified members chosen by the director.

Industrial regulation should generally be done by the director of an agency, not by boards. Use of an advisory board or commission to promulgate and apply rules should be at the discretion of that director. The exception to this rule would be in the case of adjudicatory boards. These would be established by statute and be independent of the department, except for their administrative responsibilities.

Any board or commission used in licensing or regulation should include a significant number of consumers of the product or service produced by the regulated people/industry.

All other multiheaded administrative entities should be discontinued and the administrative part of their functions assumed by a director in a substantive department. One example is bonding authorities.

Legislative commissions should discontinue any administrative functions. The Task Force contends they should evaluate administrative activities in the executive branch, but feels that their involvement in actual administration is a violation of the separation of powers doctrine — keeping the executive branch separate from the legislative branch.

Coordinating mechanisms, such as "superdirectors" in charge of more than one agency, or cabinet subcouncils where directors of related departments meet together, can and should be used to coordinate programs where consolidation of departments is necessary but not likely to be accepted.

The Task Force, appointed by both gubernatorial candidates, Republican Thompson and Democrat Michael J. Howlett, was chaired by Donald R. Bonniwell, Sr., chairman of the board, Bonniwell and Company, Inc. Members included Robert Johnston, Region IV director, United Auto Workers of America; Donald S. Perkins, chairman of the board, Jewel Companies, Inc.; and Robert H. Strotz, president, Northwestern University.

A plan to reorganize state agencies related to energy will be recommended to the governor during the session by the Illinois Energy Resources Commission. The commission's Intergovernmental Committee, chaired by Rep. Joseph Lucco (D., Edwardsville), has spent over a year on the study./ *C.S.G.*□

By TAYLOR PENSONEAU

Reprinted from Illinois Issues, November 1976

(O'Neal was elected lieutenant governor in the 1976 general election and took office in January 1977.)

Dave O'Neal

Who is he? A Republican who wins in Democratic St. Clair County and is running for lieutenant governor. He tells how he'll work with Jim Thompson if the GOP wins the governor's chair in November

THE LIFE of Belleville's Dave O'Neal, the Republican candidate for lieutenant governor in the November election, has been one of very sharp changes of direction.

Many persons felt that O'Neal bit off far more than he could chew when he jumped headlong into politics in 1970 by seeking election to the sheriff's office of St. Clair County as a Republican. The county was then, and still is, a Democratic stronghold. But when O'Neal beat Democrat Clifford Flood, it made him a luminary overnight in the rough, tumble and sometimes corrupt jungle of politics that dominates the heavily populated section of Illinois across the Mississippi River from St. Louis.

When O'Neal sought reelection to the post two years ago, the Democrats tried to defeat him with Joseph Rodriguez, one of the most respected law enforcement officers in the county. O'Neal survived.

As a result of these election successes, many observers predicted that O'Neal would not find the going any tougher when he set his sights this year on election to the state's second highest office. He handily defeated Mrs. Joan G. Anderson of Western Springs in a contest for his party's nomination for lieutenant governor in the March primary election.

The team of James R. Thompson, the Republican candidate for governor, and O'Neal has fared well in preballoting polls. As O'Neal pointed out in an interview, "This is the first race I've ever been in . . . where I've been in the lead, according to the polls . . . ."

The situation understandably has spurred interest in the background of the 39-year-old O'Neal, who is far from well known outside Southern Illinois. He is a virtual stranger, as is Thompson, to the state governmental world of Springfield.

In the event O'Neal takes office as the state's next lieutenant governor in January, Belleville might be in line for special recognition. Although statewide offices almost have become a preserve of Chicago area residents, Illinois Treasurer Alan J. Dixon, the Democratic candidate for secretary of state, also is from Belleville.

O'Neal, born in Belleville January 24, 1937, was reared on the west side of a town known for preservation of its German heritage and for the cleanliness of its old neighborhoods. O'Neal's father, Floyd C. O'Neal, who died two days after the March 16 primary, had been a miner, painter and an insurance salesman. O'Neal recalled that his father moved to Belleville from Cutler, Ill., during the Depression "to take a job, I believe, painting the [county] courthouse in the city. He stayed in the town."

After graduation in 1955 from Belleville Township High School, where he was a basketball standout, O'Neal accepted an athletic scholarship to McKendree. "I was thinking of becoming a Methodist minister," O'Neal said. "My family had always been quite religious. I had an awful lot of cousins and relatives who were clergy, or were studying for the clergy." But, after two years at McKendree, a period during which he studied theology with time out for basketball, baseball and tennis, O'Neal enlisted in the Marines.

When asked for a reason, he replied that "in looking back, I remember having some bad associations with members of the clergy I became acquainted with through McKendree, and I tended to blame the church. I was, in reality, a 19-year-old that didn't have it together. I was confused. I didn't know what to do. So, I went into the Marine Corps, hoping to settle down and maybe decide something about the future."

TAYLOR PENSONEAU
The Illinois political correspondent of the *St. Louis Post-Dispatch*, he has covered Illinois government for 10 years. A native of Belleville, Pensoneau is a 1962 graduate of the University of Missouri School of Journalism.

After returning to Belleville from the Marines, O'Neal's life entered another new phase with his graduation in 1962 from a pharmacy college in St. Louis. From that point until he became sheriff, he operated the Westown drug store in Belleville. The pharmacy was not his only business interest. He was a founder of My School, a preschool facility in Belleville for three, four and five-year-old children. He said that My School is owned by the B and D Land Corp., a firm in which O'Neal, his brother Robert and a Belleville surgeon are the stockholders.

O'Neal and his brother also are two of the three partners in Walto Associates of Belleville, an enterprise which owns, O'Neal said, about 13 buildings containing rental units. "I believe all of the buildings are in Belleville," O'Neal said, "but don't hold me to too many details about the business because I really don't have much to do with it."

In his race for sheriff six years ago, O'Neal depicted his effort as a move by a concerned individual to leave private life in order to bring respectability to an office long under the heel of the county's Democratic machine.

His campaign, observers recall, was one of the most energetic by a GOP candidate for a St. Clair office in many years. O'Neal refused to write off any areas, including the Democratic bastion of East St. Louis, the county's largest city. Saying that "everybody told me that I couldn't get votes in East St. Louis," O'Neal added that "I got about 32 per cent of the tally there, compared to the roughly 18 per cent that a Republican frequently received."

One change in the office under O'Neal was the implementation of a merit employment system for road deputies and county jail correctional officers. Process servers, bailiffs and office personnel still are patronage employees.

"I promised in the campaign to do something about the pure spoils system in the office, a reason for the lack of performance," O'Neal said. "When I took over, personnel files did not even exist. Things are different now."

O'Neal is married to the former Sandra Finley of Mascoutah. Mrs. O'Neal, a karate instructor at the YMCA in Belleville, has a master's degree in cell biology from Southern Illinois University at Edwardsville. She is now seeking a doctorate in pathology at St. Louis University. The O'Neals have two daughters, Allison, 15, and Kelly, 13. The family lives at the county jail in Belleville.

The following interview, which focuses largely on O'Neal's view of the office that he is seeking, was conducted September 2 in Springfield.

Q: What prompted your bid for the lieutenant governorship?

A: Besides wanting the office, I think it should be pointed out that in 1972, when Gov. [Richard B.] Ogilvie was going to run for reelection, he talked to me, as he did to four or five other people, and said that he was considering me for lieutenant governor. He wanted me to talk to some county chairmen, which I did for about four months, so that it would not have been a surprise to the party people if he had picked me.

Q: What is the basic theme that you are emphasizing in attempting to sell yourself to the electorate of Illinois?

A: I am stressing the contrast that I offer to the sorry state of the lieutenant governor's office in recent years. In looking at the chaos of Illinois government under the current administration, one cannot ignore the fact that the lieutenant governor, because of his political ambition and his orders from the fifth floor of Chicago's city hall, has not cooperated with the present governor. Be it the current governor's fault, or the lieutenant governor's, and I think it's a combination of both, they never did get together.

To me, there's a lack of knowledge on the job of lieutenant governor by the current lieutenant governor. Although I understand that he's a personable chap, I think his insights into government are poor because the lieutenant governor is only as viable as the governor permits. As soon as you allow your ambition to be a threat to the governor, you can't be a viable lieutenant governor.

That's why it was so important that I sit down with both of the persons seeking the Republican nomination for governor before I announced to make sure that I could agree with either Jim Thompson or Dick Cooper, that we both had the same philosophy of government.

Disagreement on some issues is understandable. However, if Thompson assigns me a job as lieutenant governor, say to present him a program, I'm going to fulfill the request in private. I'll let him present the program, and then help him lobby the legislators to see that it gets through. If he asks me to prepare a program, and I do so and then run to the media and leave him out, he's not going to assign me too many more important tasks.

So, were I in [Lt. Gov.] Neil Hartigan's position during these last four years, I would have had to resign.

Q: What is your reaction to polls which have shown the ticket of Thompson and O'Neal running strongly?

A: I am not a firm believer in polls. I am a believer in the polling place. I was not supposed to win in 1970 or 1974, and I was not supposed to win the primary of 1976. But I have a habit of winning elections. I am not a good sport. I do not like second place. So, I work as hard as I possibly can. If I should ever be defeated, let it be because I succumbed to a superior opponent, not because I didn't work.

Q: Some persons believe that you are very fortunate, politically speaking, to be running with an apparently formidable candidate such as Thompson. These individuals do not believe that you are known well enough to win election to state office on your own. What is your comment?

A: I am certainly not a household word. In the primary, naturally, I was going for Republican votes, so I think people in the party know me. But, the campaign for lieutenant governor is a low profile one — it just doesn't have the issues that the campaign for governor does. A member of the press made the statement the other day that if I were running directly against the current lieutenant governor, he would be beating me three to one. That's quite possible because of his name exposure, but if I was running against him one on one, I wouldn't be running the kind of campaign I am now.

Q: What do you believe to be your major contribution or role in regard to the Thompson-O'Neal ticket and the campaign?

A: Polls have shown that Thompson's weakest part of the state, for him, was the southern part. He's had less name exposure there, not like in the northern part where he's been a newsmaker for five years. But, I do have pretty good name recognition in the south, particularly in the heavily populated region of St. Clair and Madison counties.

Thus, I'm concentrating in the campaign on Southern Illinois. In fact, I'm

'Neither Jim Thompson nor Dave O'Neal have any enemies in the legislature . . . After two years, we'll probably have made some'

spending 80 per cent of my campaign time south of Springfield. I've been campaigning for a year and a half, quietly I'll admit, but I have been campaigning.

I want to add that our campaign is really a team effort. It is totally coordinated.

Q: Have you had any association with state government?

A: I was a member of the Illinois Law Enforcement Commission for two years. I was appointed by Ogilvie.

Q: Your critics say that your lack of extensive involvement with state government makes you less than qualified to be lieutenant governor. What is your answer to this?

A: I view this as an asset. For instance, we've seen confrontation politics for the last four years in Springfield, great anxieties between the legislature and the executive branch.

Neither Jim Thompson nor Dave O'Neal have any enemies in the legislative branch that I know of. After two years, we'll probably have made some, but now it's an open ball game. I think most legislators will be receptive when they see we're competent and mean business.

In terms of the experience argument, I think it should be pointed out that I have government background at the county level. I am also aware of municipal problems, township ones. I think the future strength of the country depends on the strength of local governments . . . and lesser federal involvement and lesser state involvement, for that matter.

Local governments need a far greater voice in Springfield. Too many times, legislators pass laws putting more responsibility on the shoulders of local governments, but then provide no extra money. Many local governments are just in a bind.

Q: Democrats contend that you and Thompson may turn off some voters with your frequent criticism of Democratic Mayor Richard Daley of Chicago. The Democrats argue that downstate attacks on Daley are nothing more than an overworked Republican campaign gimmick. Are they right?

A: Regardless of what they say, few people in Illinois want state government run by the fifth floor in the city hall of Chicago. The Democratic candidates for governor and lieutenant governor are both Chicagoans, and they both answer to Daley, meaning that their election will permit his kind of bossism in Springfield.

At no time have Thompson and O'Neal made any statement about the ability of Daley to run the city of Chicago. As compared to other major cities, his record might look pretty good. We have no ax to grind with the mayor, no problems with him that I know of. But, I don't think he should run state government.

Q: How has fund-raising gone this year?

A: In the primary, I raised money on my own. I think we raised about $43,000 or $44,000 for that effort, which isn't very much for a state primary race. Most of my primary contributions came from St. Clair County. When I ran for sheriff, we would not accept a contribution in either campaign of over $500. I didn't see why anyone would want to donate more than that to a race for sheriff. In the lieutenant governor primary contest, I would not accept any donation over $1,000. As for the campaign now, my fund-raising is completely coordinated with Thompson's effort. Whatever money comes in through me goes to the Thompson-O'Neal committee or campaign. My expenses are financed by the joint campaign.

Q: What would you do as lieutenant governor?

A: Jim wants me to be his liaison between the executive and legislative branches. Second, he wants me to be his troubleshooter throughout the state. I will move about in this regard at his direction. Third, he wants me to be his emissary. This means that I will speak for him or represent him at various events. Fourth, he wants me as lieutenant governor to be a member of his cabinet, to be part of the policy-making process. He wants feedback from my office.

Q: Does this mean that you might serve as a devil's advocate in respect to Thompson?

A: I certainly hope so. But, I am not going to go out and embarrass the governor. As governor, Thompson will have the final say in the administration. The lieutenant governor should understand that. I may disagree on a matter, and I may argue with him in private like crazy. But, the final decision is his, and once he makes it, I'll back him.

Q: As lieutenant governor, would you continue the role of so-called ombudsman that has developed in the office in recent years?

A: Oh, the office may continue doing something like that, but I am not really sure what Thompson's feeling is on it.

I think the first thing is that we have to reorganize the executive branch, which Jim has talked about all during the campaign, and stop the continued growth of all these bureaus and commissions and departments and other agencies, one on top of the other.

One hundred ombudsmen couldn't straighten out a problem for a citizen with all this red tape. So, the first thing to do, for example, would be to have it so that senior citizens would only have to go with their problems to one or two agencies instead of having to deal with some 16 as at present.

Q: What is your reply to citicism that a ticket of Thompson, a former prosecutor, and O'Neal, a sheriff, represents an overemphasis on law enforcement?

A: I don't think it is an issue. If it would be, then it's an asset, not a detriment. Law enforcement is one of Thompson's priority areas on spending.

The criminal justice system is not functioning properly in Illinois. That also needs to be overhauled. We intend to do that. So, his knowledge of prosecution and the courts and my practical knowledge of on-the-street law enforcement will be an asset in knowing exactly where we're going in this regard.

The next question usually touches on our concern for individual rights, and I'd like to touch on this right away. Jim Thompson is the kind of constitutional lawyer that puts personal rights above everything else.

I'm the sheriff that turned a segregated jail into an integrated jail. I'm not aware that any charges or cases have ever gotten off the ground where we've been accused of brutality or violating the rights of a person.□

By CHARLES B. CLEVELAND

Chicago

What's the sentence for a crime? It depends on the judge

Reprinted from Illinois Issues, November 1976

TODAY one of the big topics of public concern is crime and, among the experts, what to do about it. An increasing number of authorities are shifting from emphasis on reform to get-tougher standards on criminals.

One person who sees crime close up on a regular basis is Marvin E. Aspen, a judge in the criminal court of Cook County.

Aspen: Sentencing of the guilty person is the end product of the criminal justice system. It is the statistic by which our system is judged. There's a lot of dissatisfaction: that it isn't doing what we had been led in the past to believe it would do, that it would deter that person from committing another crime or deter others. There are elements of truth in all that, but it has not proved the panacea.

Q: Isn't the problem that we're not sure what we want to do — punish the criminal or rehabilitate him?

A: We're trying to do several things — punish the criminal, try to return him to society, deter others. Some of these things are contradictory. How do you punish somebody and, at the same time, rehabilitate him? The answer is that sometimes punishment is more important, sometimes rehabilitation is more relevant. These all go into the pot, so to speak, that brews the sentence.

Q: How do you decide on the sentence?

A: There are no set rules. A judge must sift through the facts to decide what is best for each individual case: the goals, facts in the case, background of the defendant, what kind of penitentiary system we have, what leeway do the statutes allow.

Q: Doesn't that produce another problem — one defendant gets off easy, another with the same crime gets a stiff sentence?

A: Judges are all individuals; we all have our own hangups. I may have a particular view about sex or religion; somebody in my family may have been the victim of an armed robbery years back. Locale plays a role.

If you go to the penitentiary, you'll find the toughest sentences are being imposed outside Chicago; the persons who are getting the bigger sentences are rural whites as compared to urban blacks. I have hundreds of cases of armed robbery that go through my court every year; unfortunately, that's a part of urban life. It is not a part of rural life; if somebody goes into a small town and holds up the filling station that's run by a well-liked person and the robber is a outsider, he may wind up with 10-to-30 years in the penitentiary. In Chicago that same crime may only mean four years. When those two defendants get together and compare notes, you've got trouble.

Q: What's the answer then?

A: Perhaps we should have an appellate review of all sentences automatically or empower the parole board to review all sentences before they become final. When I went to law school there were no courses in sentencing — there still aren't — but now there are conferences and literature on sentencing that help. Judges are taking greater interest in the subject.

Specific sentences

Q: What about specific sentences for specific crimes, say four years for armed robbery?

A: At first blush that sounds attractive, but there are other factors: youth of the defendant, was it his first offense, what are the chances of rehabilitation? You'll find that if you treat all defendants alike, you are causing more injustices than the one you tried to correct. Let me illustrate with two cases from my court. One man goes into a currency exchange with a sawed off shotgun, terrorizes everybody, walks out with $20,000; he's been in trouble with the law before, a pretty bad actor. Another, a 19 year old celebrating the birth of his first child, drinks with an old friend until two o'clock. Driving home, his friend gets out of the car, stops a man jogging in the park, threatens him with a lead pipe and gets $1. The friend then disappears, but the victim gets the license number. Under Illinois law, the accessory is just as guilty as the person who committed the crime.

Caseload differences

Q: What other factors differ between Chicago and downstate?

A: Backlog of cases. In a rural area there may be no problem; in Cook County we must plea-bargain 85 per cent of the cases just to make sure they don't go free just for lack of a trial. We must try a case within 120 days (180 if the man is on bond) or the defendant goes free. And plea-bargaining means the defendant is getting a lesser sentence than he ought to.

Q: Why doesn't the present system work? On paper, at least, our system of parole which judges when a man has been rehabilitated makes sense.

A: That assumes rehabilitation. Rehabilitation does happen, but in spite of the system. Penitentiaries serve only one purpose: human warehouses. And they're needed to keep people locked up whose past history shows them to be dangerous on the street. But what about first offenders? For them, we need alternatives.□

OIL IN ILLINOIS

A new oil well, estimated to produce up to 100 barrels of oil a day, was reported September 8 near Waterloo, Ill., and within the area designated for the new St. Louis airport.

By WALTER D. JOHNSON

What the judges think about

No-fault divorce

Even if husband and wife have mutually agreed upon divorce, one must be found at fault. The no-fault concept eliminates the need to find one partner in the wrong. About half the states have adopted such laws; bills have been considered, but not enacted, in Illinois

GROUNDS FOR DIVORCE are specified in state statutes. Reasons for marriage are not. To obtain a divorce in Illinois, the wife or husband must accuse the other in court on one of the grounds. Even if the husband and wife have mutually agreed to the divorce, one must be found at fault in front of the judge.

No-fault divorce is a concept that eliminates the need to legally establish that either spouse is in the wrong. California adopted the principle in 1969, and about half of the other states have followed suite. Several of the remaining states, including Illinois, have considered passing the same legislation. No bills have passed the General Assembly, but a majority of judges throughout the state, who are primarily concerned with divorce cases, favor the adoption of no-fault in Illinois, according to a survey.

The recognition of grounds other than adultery by New York in 1967 continued the trend liberalizing state divorce laws. Mental cruelty was added to the existing list of grounds for divorce in Illinois in 1967, a step which eliminated the necessity of those seeking divorce, and their lawyers, to provide concrete evidence of transgressions such as adultery or physical brutality. In 1973, the clause requiring witnesses to marital offenses was dropped in favor of a single corroborative testimony, a step which further eased adversary pressures of the divorce procedure. Following the pattern established in other states, the next logical step in revising Illinois divorce law would be the adoption of the no-fault concept. Indeed, a variety of bills has been introduced in the General Assembly in the past five years relating to no-fault. Considerable controversy, however, has surrounded these proposals, and none has passed. Legislative discussion has centered around the lack of protection no-fault gives to women or to the individual not wanting the divorce, the need to protect children, the fear of further increasing the number of divorces by making it easier, and finally the potential for increased financial burdens on the state.

As the branch of government charged with carrying out state laws on divorce, the Illinois judiciary will be directly affected by any changes in these statutes. The debates and actions of the General Assembly on no-fault divorce are obviously of deep concern to the state's judiciary. Throughout the past five years of discussion relating to changing Illinois divorce law, however, no concerted effort has been made to find out what the judges think about the whole issue.

In an attempt to remedy this situation, Sangamon State University's Legislative Studies Center undertook a survey of the state's judiciary this spring. A questionnaire concerning the no-fault concept was sent to 143 Illinois judges, all of whom were identified as being responsible for hearing divorce cases based on assignment records of the chief judge's office of each of the 20 judicial circuits in Illinois. For the Chicago circuit a list of those judges assigned to the chancery division (which handles divorce) was used. Completed questionnaires were returned by 102 judges.

When asked about the adoption of no-fault in Illinois, 69 per cent of the judges favored this move. Only 23 per cent were opposed to its adoption in Illinois. Eight per cent were undecided. Like the legislature, the judiciary was divided on what form no-fault should take. In recent years the issue of whether to replace the existing grounds for divorce with no-fault or add no-fault as an alternative while keeping the present fault grounds has become a crux in the legislative debate over no-fault. The judicial viewpoint provides no real assistance in resolving this dilemma. Of judges favoring no-fault, 37 per cent advocated replacement, 41 per cent preferred the additive concept and 6 per cent wanted it restricted to cases where children were not involved. The remaining 16 per cent were undecided as to what form the law should take. As was the case in the General Assembly, judges voting for the addition of no-fault generally argued for the preservation of existing grounds as a protective measure for a spouse who did not want the divorce, They felt that having to

Dr. WALTER D. JOHNSON
Associate professor of economics and legislative studies, he heads the Family Studies Committee of the Illinois Legislative Studies Center at Sangamon State University. This article is excerpted from "Divorce, Alimony, Support and Custody: A Survey of Judges' Attitudes in One State," *Family Law Reporter,* Bureau of National Affairs, Inc., Washington, D.C., November 4, 1976. The full study is also available from SSU's Legislative Studies Center.

'judges voting for the addition of no-fault generally argued for the preservation of existing grounds as a protective measure for a spouse who did not want the divorce'

prove cause would deter the other party from acting too hastily and help to maintain the bargaining power of the person not wanting the divorce. Those favoring a single ground pointed to the almost exclusive use of mental cruelty in their jurisdictions, noting that the "addition of no-fault 'grounds,' really abolishes and makes senseless any grounds."

Most common grounds

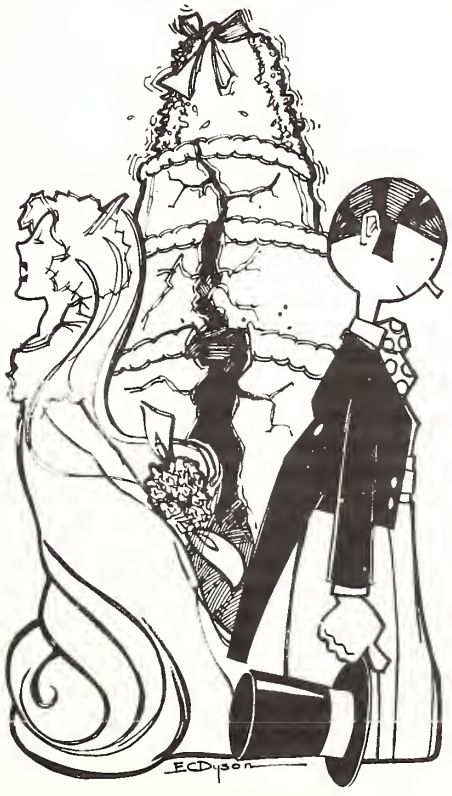
Anticipating the mental cruelty argument by those who favored replacing all other grounds with no-fault, the judges were asked what percentage of divorce cases claimed mental cruelty as the basis for the action. Nearly three quarters (72 per cent) of the judges estimated that at least 90 per cent of the divorce proceedings they heard utilized mental cruelty as grounds. Almost half placed it at 95 per cent or above. Only three justices outside of the Chicago circuit cited figures lower than 75 per cent. Chicago was unique in that approximately the same number of divorce cases are heard on the grounds of desertion as on mental cruelty. Although comparable figures were not available from the other circuits, areas with heavy urban populations usually reported less use of mental cruelty.

In contemplating the move to no-fault, a number of judges noted that the real issue is how to balance off the need for easing the trauma of divorce while still protecting the rights of the individual and the integrity of the family unit. The question for them then becomes, will no-fault offer a remedy for this problem? The answer is not easily arrived at.

As one judge said: "The lawyer practitioner does not want no-fault because he fears litigants can avoid his services. That of course depends upon how the legislation is written. On the other hand he doesn't want the court to have too much say about whether the non-faulting party can get a divorce or as to what the terms of the divorce shall be. I say they cannot have it both ways.

"In my view, figuratively, if two persons to a marriage contract wish to cancel that contract, they have no dependents, and no property or debt entanglements that need the artful hand of a practitioner to avoid further litigation, they ought to be able to go to a counter, sign a book and cancel the contract.

"Now those cases would be a small percentage of the divorce cases through my court. I certainly do not want litigants to be able to secure the laundry process of the court, putting the responsibility solely on the court as to their property rights and the rights of their children without at least one advocate, representing one of them."



Considerable attention has been given in the General Assembly to a compromise position based on a waiting period to be required between filing for a divorce and the scheduling of the hearing. Those arguing that no-fault should replace other grounds generally state that the inclusion of a mandatory waiting period will give the parties time to contemplate the wisdom of their action and provide a protective buffer for the party who does not want the divorce. While offering the waiting period as a compromise, proponents of replacement would like the time period to be minimal. On the other hand, those who would like to merely add no-fault, advocate an extended waiting period which would make no-fault less attractive.

The compromise issues

When polled concerning the establishment of a waiting period, given the adoption of no-fault, 30 per cent of the judges felt it was unnecessary. Of those who favored a waiting period, 22 per cent felt one month was sufficient; 24 per cent voted for two months; 18 per cent set it at three months and 6 per cent at four months. A current legislative proposal of a six-month waiting period was chosen by only 21 per cent of the respondents. The remaining 9 per cent opted for periods between six months and a year.

A second compromise issue revolves around the establishment of a reconciliation service for individuals who file for a divorce. Again, those who favor replacement see this as a protective measure for the spouse not wanting the divorce. When asked if they would favor the establishment of a reconciliation service, 65 per cent of the judges replied that they would. In choosing between a mandatory or a voluntary service, 63 per cent of those favoring counseling felt it should be voluntary, although several judges qualified their responses by adding that if one of the parties were to request the service, it should be mandatory for the other to attend. Approximately half the judges who voted against a reconciliation service also added that if one were instituted, it should be on a voluntary basis. Several stated they would favor the institution of such a service but not in the courts. Others cited the lack of funds in their jurisdic-

tion as the motivation for their negative response.

The real issues in almost any divorce center on finances and/or children involved. By removing the necessity of proving fault, many believe that the bargaining position of the parties, especially the female, will be weakened. It is argued that retaining the fault concept is crucial for protecting both sides. When asked if they felt the adoption of no-fault would affect settlements and/or their judicial decisions, almost half (48 per cent) of the judges surveyed responded negatively. An additional 8 per cent felt it would have only a slight effect, and only in unusual cases. Some justices (6 per cent) were not sure what the effect would be and took a "wait and see" approach to the question. Interestingly, the 38 per cent that answered "yes" to the question were almost equally split between those that felt the adoption of no-fault would have a positive effect on negotiations and those that thought it would create additional problems. Those in the first group generally felt that no-fault would help remove some of the sting from the divorce process by reducing its adversary nature. As one judge put it, "Divorces will be better conducted and emphasized and will help the parties and the children by allowing their energies to be used in the proper areas." In the final analysis, less than 20 per cent (half the yes responses) of the judges felt the adoption of no-fault would have an adverse effect on the negotiations or the settlements.

For better or worse

In summary, the judiciary, like the legislature, basically favors the idea of adopting the no-fault principle of divorce in Illinois but is divided as to what form this change should take. There also tends to be agreement on the institution of a reconciliation service, with the judiciary favoring a voluntary program. Compared to their counterparts, however, Illinois judges prefer a shorter waiting period in obtaining a divorce. The judiciary also tends to discount the potentiality of problems arising in regard to the marital settlement agreements. It is their view that the adoption of no-fault may in fact help allay some of these problems by removing the basis of much of the bitterness which now arises out of an accusatory process.□

Criminal justice reform in Cook County courts:

SINCE THE turn of the century lawyers, litigants, defendants, journalists and scholars have made complaints about the way their local criminal justice system operated. Among the many proposals these complaints have generated, one of the most frequently voiced is to beef up the resources devoted to handling of criminal cases. This was one of the more fundamental proposals of the Wickersham Commission in 1931 and the President's Commission on Law Enforcement and Administration of Criminal Justice in 1967.

In Illinois, the Chicago Bar Association in its 1975 *Program For Action* advocated a major set of reforms for the criminal justice system in Cook County. Underlying this set of reforms, is a call for vast increases in resources — more judges, prosecutors, public defenders, courtrooms, and so forth — allocated to the felony court system. One specific recommendation is to reduce trial judges' workloads from the present rate of approximately 300 cases per year to only 75 cases per year. In response to the recommendation, as well as other factors, the Illinois legislature recently amended the Circuit Judges Act (*Illinois Revised Statutes*, ch. 37, sec. 72.2) by increasing the number of circuit judges in the state by one-third. Cook County alone will get an additional 30 circuit judges, and Chief Judge John Boyle is quoted as saying that he will assign all 30 to the Criminal Division (*Chicago Sun-Times*, November 29, 1975).

While the bar association's proposals and the Illinois legislature's action are clearly within the mainstream of traditional thought on criminal justice reform, until just recently the relationship between criminal justice resources and the "output" of criminal courts has never been examined. Modern criminal justice scholars have begun to look with a wary eye, however, upon reform proposals aimed at increasing resources which are unaccompanied by a more fundamental restructuring of the whole court process. Some researchers have found that substantial increases in criminal justice resources in various court systems have not led to improvements in the efficiency of the courts.

The relationship between increased *judicial* resources and criminal court output needs to be examined more closely in the Cook County system. Judicial resources can be considered separately and systematically because reliable data exist. Data on the other resources (prosecutors, public defenders, clerks, courtrooms, etc.) are hard to acquire. Also, the level of judicial resources is a good indicator of the level of total criminal justice resources at any given time. More judges means that there must also be more courtrooms, more clerks, more bailiffs, etc., and usually means an increase in the number of prosecutors. A final reason for focusing upon judicial resources is that such an analysis can shed some light upon the impact in Cook County of the recent amendment to the Circuit Judges Act.

There are three generally accepted measures of criminal court output: the conviction rate, the dismissal rate, and the average amount of time required to dispose of a case. These are the most important indicators of courtroom efficiency because they cover the total percentage of defendants convicted, the total percentage arrested but never brought to trial (convictions + dismissals + acquittals after a trial = total dispositions), and the time required to dispense justice. These three measures are not, of course, perfect indicators of criminal court efficiency because there are no absolute standards by which a court can be gauged. People generally

By PETER F. NARDULLI
An assistant professor of political science and a member of the Institute of Government and Public Affairs at the University of Illinois.

Reprinted from Illinois Issues, August 1976

Is more always better?

agree that "criminal justice delayed is criminal justice denied," but ideas of what undue delay means can vary significantly. Finally, the rates of conviction and dismissal depend upon what kind of cases a court handles.

Despite the problems with the measures of efficiency, those who favor increased resources argue that present conviction and dismissal rates are poor, and that processing time is slow. Their position is based upon the belief that many culpable defendants are able to escape from the system because the judges, prosecutors and clerks responsible for processing their cases are overworked and may not get a conviction because they don't have enough time to adequately handle each case. Heavy workloads also produce lengthy and unfair delays in the processing of cases. This affects conviction rates because it discourages witnesses and victims from following through with their initial complaints. Many cases are dismissed for this reason. It is argued that reduced workloads will shorten the time span for all trials, hence producing more convictions in a shorter time and encouraging more initial complaints to be brought to trial.

Although it is impossible to objectively determine whether any culpable defendants are in fact escaping punishment in Cook County, the Cook County felony courts have had historically lower conviction rates than other large urban systems. *The Wickersham Report* (Vol. 4, pp. 190-191), for instance, found that in 1926 only 19.7 per cent of all defendants arrested for felonies in Cook County were convicted. The comparable figure for Milwaukee in 1926 was 63.5 per cent; for Baltimore in 1928, the figure was 53.4 per cent. Similar results were reported in a 1972 study, as yet unpublished, by Herbert Jacob of Northwestern University and James Eisenstein of Pennsylvania State University which compared the felony court systems of Chicago, Baltimore and Detroit. They found that only about 20 per cent of the defendants in Cook County were ultimately convicted — as opposed to 43 per cent in Baltimore and 58 per cent in Detroit. On the basis of these figures, it appears that either the various law enforcement agencies in Cook County are arresting too many innocent people or that at least some guilty defendants are escaping punishment in Cook County.

Cooperative relations

Although there may well be room for improvement in Cook County, there is doubt that merely increasing criminal justice resources will result in improved conviction rates, dismissal rates and processing time. Those who advocate this type of reform fail to recognize that modern criminal courts do not operate the way they do on *Perry Mason* or *Petrocelli*. In reality, many judges do not operate as neutral parties and often assistant state's attorneys and defense counsels are not adversaries. Rather, modern criminal courts are characterized by cooperative relations among the judges and attorneys. They cooperate because it is in their mutual self interest to dispose of as many cases as possible in a rapid and informal manner. This cooperative relationship has led many to contend that criminal courts operate much like any other bureaucracy.

Parkinson's Law — that venerable axiom of bureaucratic behavior — states that the resources required to perform a given task increase with the resources available to complete it. Within the context of this analysis, Parkinson's Law, if applicable, means that members of the "court organization" would not make good use of additional resources. Instead, they would be inclined to operate at about the same level. They would obtain about the same proportion of convictions and dismissals in about the same amount of time, and would use the additional resources to achieve personal goals.

Data analysis

A better idea of the value of increased resources can be obtained by comparing conviction rates, dismissal rates, and average processing time for felony cases in Cook County at two different points in time. The first data come from the classic *Illinois Crime Survey* conducted in 1926 by the Illinois Association for Criminal Justice. The second set of data comes from a 1972 study by Jacob and Eisenstein.

In 1926 there were only seven judges in the old Cook County criminal court, while in 1972 fifteen trial judges manned the Criminal Division of the circuit court. Interestingly enough, however, the number of defendants handled by the fifteen judges in 1972 was actually less than the number handled by the seven judges in 1926 (5,253 in 1926; 4,281 in 1972). (The 1972 figures were computed from data included in "Statistical Report; Bonds, Cases, Fees, Fines, and Costs; December 1st to November 30th 1970-73" prepared by Matthew J. Danaher, Clerk of Circuit Court, p. 5. The 1926 figures came from *Illinois Crime Survey*, p. 43). If judicial caseloads are computed by dividing the number of defendants handled during a year by the number of judges handling criminal cases, it can be seen that between 1926 and 1972 the average felony caseload in Cook County trial courts *decreased* by 62 per cent. In 1926 the average caseload was 750 per judge per year, in 1972 it was 285. The number of assistant state's attorneys also increased significantly during this period. In 1926 there were between 28 and 35 assistants assigned to handle felony cases, while in 1972 there were 50. It was not possible to determine the exact number of prosecutors assigned to trial courts, however, so caseload figures for prosecutors could not be computed.

Disposition rates

When the dispositional rates of the 1972 trial courts are compared with those of the 1926 trial courts, some interesting differences emerge. First,

despite the lightened workload in 1972, the median number of days between grand jury indictment and the ultimate disposition of a case rose from 75 days in 1926 to 151 days in 1972, an increase of about 100 per cent. Table 1 breaks down the various dispositions of criminal cases in 1926 and 1972. At first glance, it appears that, despite the longer processing time, the conviction rate in 1972 is higher. The proportion of cases dismissed declined by about 15 per cent and the proportion of cases convicted increased by about 14 per cent.

Although these figures are correct, they should be viewed cautiously. Comparisons between 1926 and 1972 *trial court* statistics are not very meaningful, because since 1926 many changes in the nature of the dispositional process have taken place. Most of these changes relate to the role performed by the preliminary hearing courts.

Before a felony case can be sent to the grand jury, and eventually to a trial court, a judge in a preliminary hearing court must first enter a finding of probable cause. Besides conducting preliminary hearings, the preliminary hearing court judge also performs a screening function. He attempts to dismiss, at an early stage, weak or non-serious cases. He can also accept guilty pleas to felony and misdemeanor charges. Between 1926 and 1972 the manner in which the preliminary hearing court judges performed this screening function changed significantly. This has important implications for the types of cases that actually went to trial and makes comparisons between 1926 and 1972 trial court statistics tenuous. For instance, in 1926, 40 per cent of all felony cases eventually filtered through the lower courts and the grand jury to a trial court, while in 1972 only 11.5 per cent of all felony cases were sent to a trial court. In 1926 the lower courts which conducted preliminary hearings dismissed or entered findings of no probable cause in 50 per cent of all felony cases; in 1972 this figure rose to 75 per cent. This means, of course, that in 1926 the trial courts were probably handling many weaker cases (cases not screened out by the lower courts) than were the trial courts in 1972. This could well account for the greater dismissal rates in the 1926 trial courts.

Another significant difference between trial court operations in 1926 and 1972 concerns guilty plea rates. In 1926 only 0.15 per cent of all felony cases resulted in guilty pleas in lower courts. In 1972, however, 16.9 per cent of the felony cases resulted in guilty pleas to felony or misdemeanor charges at the preliminary hearing level. This indicates that many defendants who would have "copped" a plea at the trial level during 1972 did so at an earlier stage. Hence, the guilty plea and conviction rates for 1972 and 1926 are also not strictly comparable.

Table 1
Dispositions of cases, Cook County Criminal Trial Courts, 1926 and 1972

	1926[1]	1972[2]
Cases dismissed	34.5%	19.4%
Cases convicted	53.5	67.4
Cases acquitted after trial	12.0	13.2
	100.0%	100.0%
Number of cases	4,822	596*

**sample*
[1]*Computed from* The Illinois Crime Survey.
[2]*Computed from Jacob's and Eisenstein's data.*

Rates of entire system

While differences make the comparison of trial court disposition rates for 1926 and 1972 not wholly meaningful, the real impact of the reduced workload of trial court judges can be assessed in another way. The disposition rates for the entire system (preliminary hearing court dispositions, grand jury dispositions, and trial court dispositions) in 1926 and 1972 can be compared. If the reduced workload of trial court judges has enabled them to handle their caseload more effectively, this should be reflected in lower dismissal rates, higher conviction rates, etc., for the felony disposition process as a whole.

Table 2
Felony disposition rates in Cook County, 1926 and 1972

	1926[1]	1972[2]
Dismissal rate *(dismissals, findings of no probable cause, no bills)*	73.2%	78.1%
Conviction rate *(guilty pleas, convictions after trial)*	21.9	20.4
Acquittal rate *(finding of not guilty after trial)*	4.9	1.5
	100.0%	100.0%
Number of cases	(13,117)	(514)*

**sample*
[1]Illinois Crime Survey.
[2]*Jacob and Eisenstein data.*

An examination of these overall rates leads to some revealing results as shown in Table 2. In 1926, 73.2 per cent of all cases were dismissed by a lower court or a trial court, resulted in a finding of no probable cause by a lower court judge, or an indictment was not returned by the grand jury. The comparable figure for 1972, 78.1 per cent, shows that the decreased workload did not result in a lower overall dismissal rate. In 1926 the overall conviction rate for the Cook County criminal court system was 21.9 per cent, while in 1972 it was 20.4 per cent. A 62 per cent reduction in the workload of criminal court judges between 1926 and 1972 resulted in no increase in the conviction rate of felony cases in Cook County. An average case took about twice as long to process, and there was almost no difference in the overall dismissal and conviction rates.

Conclusion

These facts cast some doubt upon the belief held by many that Cook County criminal courts will operate better, i.e., produce higher conviction rates, if more judges are appointed. Unfortunately, however, the facts shed little light upon the factors which do account for the apparent malfunctioning of the system. Much more study is required to truly understand how and why the system operates as it does. The most important area to be considered is the interrelationships among those who control the felony disposition process — the judge, the prosecutor and the defense counsel. One must look to the structure of the "court organization."

In Cook County the disposition of the vast majority of felony cases is controlled by a small group of judges, assistant state's attorneys, public defenders and regular criminal practitioners. These individuals have mutual interests because they desire to dispose of their caseloads as expeditiously as possible. In a vast majority of cases they have the power to do this, because together they control all of the vital aspects of the process (set bail, initiate charges, determine the nature and number of charges, make motions, determine guilt or innocence, sentence, appeal, etc.). In order to improve the quality of criminal justice in Cook County, those concerned with its reform must begin to grapple with the implications of having so much power vested in such a small and cohesive elite.□

By WILLIAM LAMBRECHT

Director of Environmental Protection Agency

Leo Eisel

The new director of the controversial EPA believes the agency can put together programs that will maintain a healthy environment and a healthy business climate — including development of the state's coal reserves. He says pollution can be reversed. The question is how much will society pay to do it?

Reprinted from Illinois Issues, May 1977

WILLIAM LAMBRECHT
Springfield correspondent for the *Alton Telegraph,* he is now covering his fifth session of the General Assembly. Lambrecht has written numerous magazine articles on energy and coal development. He has degrees from Illinois Wesleyan and Sangamon State universities.

LEO M. EISEL is no longer concerned about New Zealand's severe ecosystem disruption, which resulted when Europeans introduced multitudes of new grazing animals into lands where only the now extinct Moa birds lived. Nor is Leo Eisel worried primarily these days about the effects on Pakistani farming from the introduction of improved technology, such as the new varieties of wheat and rice.

Eisel is relying, however, on his international experience in his first months as director of the Illinois Environmental Protection Agency (EPA). He believes that there are several parallels between what is going on in New Zealand, Pakistan and the Prairie State. "We have similar problems in Illinois where new technology is thrust into the agricultural and environmental systems. There's something to be learned although we live in a completely different system," Eisel said in discussing his foreign studies and work.

The 34-year-old Eisel, who most recently headed the Illinois Division of Water Resources under Democratic Gov. Dan Walker, was chosen to the hotseat post as head of the EPA by Republican Gov. James R. Thompson.

Before his Water Resources post, Eisel was staff scientist for the Environmental Defense Fund. He served for a year as a research associate in the U.S. State Department's Aid for International Development program, which included work in Pakistan. Eisel's educational background includes a Ph.D. in engineering from Harvard University, a master's degree in hydrology from the University of Canterbury in Christchurch, New Zealand, and a bachelor's degree in forestry from Colorado State University.

During his Water Resources tenure, the soft-spoken Eisel gained a reputation for his ability to bargain with legislators in highly political situations. One House member, East Alton Democrat John F. Sharp, recently called Eisel "the best director I've ever seen," after a flood control project sought by his district for 40 years was finally contracted. "He doesn't act like a dictator like some of these directors. He'll stick with you no matter what if he feels you've got a good proposal," Sharp said.

Eisel assumes a post which has always attracted controversy since the EPA was created by the General Assembly in the 1970 Environmental Protection Act to enforce regulations laid down by the Pollution Control Board (PCB). Also established was the Institute for Environmental Quality. The first EPA director, Clarence W. Klassen, was fired by Gov. Richard B. Ogilvie after only seven months on the job. Klassen and his compromising approach to the job were ousted in favor of William L. Blaser, who used what has been called "the big-stick approach" in getting the agency off the ground.

It was under Blaser when EPA's image problems — which Eisel recognizes — first began to form, and the agency received most of the blame from industry and farmers for the initial PCB rulings. The volatile nature of the EPA directorship continued when Gov. Dan Walker's first appointment to that office, Ms. Mary Lee Leahy, was rejected by the state Senate largely on political grounds. Shortly after, the Senate confirmed Richard H. Briceland as Illinois EPA director; he was a former director of technical support and special projects for the U.S. EPA. To the dismay of the environmental-minded, "the big-stick approach" gave way under Walker and Briceland to the method of enforcement termed "voluntary compliance."

Eisel enters the agency at a time when the catch-phrase for pollution control is

'The governor is very concerned that the impact of enforcing environmental rules and regulations on the economic sector of the state be kept to as little as possible'

"balancing the interests of business and the environment." He discusses the competing interests of business leaders and environmentalists and the challenges of EPA generally in the following interview which took place on February 18, 1977.

Q. Under Gov. Ogilvie and EPA Director Blaser, the state carried out what has been called a "big-stick approach" in environmental law enforcement. Under Gov. Walker and Director Briceland, the approach switched to "voluntary compliance." Initially, how do you see your policy? Is there any fitting label?

A. I haven't been here long enough to develop any phrases like that. The progression you've described is kind of the natural thing that would occur in a new agency. Suddenly, in 1970, here were all these permits to be issued, papers to be passed and whole new programs instantly thrust on the agency.

Initially, a "big stick approach" probably was necessary in order to impress on people that the state was serious about cleaning up pollution. Under Gov. Walker an effort was made to continue effective enforcement of environmental rules, regulations and laws but with reduced reliance on litigation. I think that Gov. Thompson is very concerned that environmental standards be met in the state, that air quality, water quality and land problems be cleared up, and various goals met, but this is to be done in such a fashion that we don't create unnecessary problems or hardships on business or agriculture. But I don't detect any kind of a softening under Gov. Thompson's priorities, and I certainly don't intend to see weakening of environmental goals or standards.

Q. Do you see feasibility in the voluntary compliance method of enforcement?

A. Yes, I think it's always far better if you can get reasonably rational people in the same room before the lawyers start passing paper around. Because when the lawyers get into the act, with all due respect to lawyers, it just slows things down. Everything has to be done in such a terribly precise manner.

Q. Would you like to see an increase in the number of enforcement cases brought by the EPA before the Pollution Control Board? Isn't there a correlation between voluntary compliance and a lower number of enforcement actions?

A. I don't really know. The objective of the agency is to seek compliance with standards, goals and regulations, not necessarily just to chalk up enforcement cases. I don't think that's a very good metric to measure performance. The metric is how many industries are in compliance, how many treatment plants are in compliance and that type of thing.

Q. Do you think the EPA now has an image problem?

A. Yes, I think we are looked at as obstructing progress, and we are unfairly given the black hat on occasion.

I see as one of my major concerns the improvement of the Illinois EPA's image. Residents of the state have got to understand that there are important reasons for environmental rules, regulations and laws and that these rules and regulations are not generated by the bureaucracy simply for preserving bureaucrats' jobs.

Q. Will the inherent business concerns of a Republican governor be reflected in your management of the agency?

A. They have not to date, and I certainly would not expect them to be. We have standards, rules and regulations that carry the force of law and are very specific. You can only go so far when you have very specific rules and regulations.

Q. When you interviewed with the governor, what are some of the things you agreed on?

A. The governor is very concerned that the impact of enforcing environmental rules and regulations on the economic sector of the state be kept to as little as possible, and these are certainly my concerns, too. We have to be concerned about displacing people from jobs and displacing businesses in this state. I think often it's not the black/white issue of jobs versus environmental quality. We can put together programs to maintain a healthy business climate and also maintain a healthy place to live.

Q. But are those two goals not mutually exclusive? In essence, aren't you just constantly trying to achieve a balance between business concerns and a clean environment?

A. I think the term "balance" often implies to a lot of people a kind of selling out to the business community, i.e. we're going to weaken standards to keep the businessmen happy. I think there is often the "them against us," "black hats versus the white hats," this "are we going to freeze to death or burn coal?" It isn't that simple; it's not an either/or situation, but a case of whether the industries who burn coal are going to pay to install the pollution equipment so they can burn coal — or are they going to try to beat us back so they can burn coal without the pollution control equipment. So it's not a case of burning coal, but of spending the money for the pollution control equipment to keep down the sulfur dioxide and other pollutants.

Q. Would you like to be known as a vocal and independent director, or do you feel your loyalty to the governor must transcend all other considerations in your job?

A. Obviously, I work for the governor, and I certainly will support his policies and programs. I believe the governor's and my environmental philosophies are similar, and I do not expect any major disagreements.

Q. What do you see as the most pressing issue currently before the EPA?

A. The whole energy thing is terribly important because we do have a fantastic energy resource in the state [coal], which will be developed and which should be developed. I think that we should put together a program which will allow for the development of that resource without environmental problems.

Q. In coal development, what type of emerging environmental problems do you see that you can affect?

A. Here we're talking mainly about air quality. The two major issues we're looking at are air quality and water quality, which can be affected by the acid runoff situations. The whole question of land reclamation is a terribly important one because of the agricultural concerns.

Q. Is there any area of federal preemption, as in nuclear regulation,

which may hinder you? Would you like to see more states' rights with regard to combatting environmental problems?

A. We don't do anything with nuclear regulation in this agency. Yes, it's always good to have control over your own destiny, but the problem is that the control costs money.

Q. The EPA and the Attorney General's Office have been enmeshed in an ongoing jurisdictional dispute over preparation and presentation of cases before the PCB. Do you see this conflict as having ended?

A. That dispute is ended. I just had a meeting with the attorney general's people this afternoon, and the attorney general will represent the agency in matters of variance, enforcement procedures and permit denial proceedings. I think a workable relationship has been established.

Q. In the Division of Water Resources post, you appeared generally successful in your budget dealings and other interaction with the General Assembly. But now in your more volatile job, do you expect legislative potshots?

A. The big difference between this agency and water resources was that there we did things for people like build reservoirs and flood control projects. Essentially, Water Resources functions as a public works type of agency. Here, a much tougher agency. You're basically telling people, for example, "We're sorry, but you're going to have to spend $12 million to clean up this problem." That's not going to make very many people happy.

Q. Do you think that effective environmental protection is possible in a highly industrial and mechanized farming state like Illinois?

A. Yes, and I think it has to be. Illinois is often used as an illustration of a cross section of the United States with our major industry and highly developed agriculture. If we can't pull it off here, then I think the whole country has a lot of problems because I think we offer some examples of all the major pollution problems in the country today.

Q. Do you think that air and water pollution can be reversed, or that the best we can do is stem the tide of pollution?

A. I think it really depends on how much we are willing to pay. From a technical point, pollution can be reversed. But the question is "How much will society pay?"□

IEPA launches state clean water plan

ILLINOIS TOOK a step towards statewide resource use planning early this year when the state's Environmental Protection Agency (IEPA) began a $4 million, two-year program to develop a statewide clean water plan. The plan must set water quality standards and identify municipal and industrial waste treatment needs in the state over the next 20 years as well as a means for financing them.

Planmakers are also tackling the difficult — and not yet fully understood — problem of "nonpoint" water pollution. Unlike sewage and industrial effluents, which can be traced to a point of origin and treated before being released into streams, nonpoint pollution comes from a variety of sources covering a wide land area. Runoff from farmlands contains sediment, nitrogen, phosphorus, ammonia and organic wastes. Urban runoff carries litter and pollutants such as heavy metals, sulfuric acid, sediment and asbestos. In mining areas, minerals from slag heaps combine with rain to form sulfuric acid. All of these pollutants end up in the state's streams and rivers, causing extensive violation of water quality standards even after required levels of treatment are applied to discharges from sewage and industrial plants. Measures to control nonpoint pollution could include land management, economic incentives, education and regulation.

Mandated by the 1972 amendments to the Federal Water Pollution Control Act, which calls for measures that would make the nation's waters clean enough for swimming and fishing by 1983, the IEPA plan is being developed by statewide resource planning groups and citizens advisory committees. The planning program is funded by $2.2 million from the federal EPA and $1.8 million from the IEPA and the Institute for Environmental Quality. The completed plan must be given to the governor and to the federal EPA by October 1978.

The IEPA has created the following task forces and committees to work on the plan.

Statewide policy advisory committee. Consisting of heads of state agencies, local government representatives and special interest groups. To develop proposals of regional groups into state policy alternatives; find ways to allocate responsibility for water quality between state and local government and to resolve conflicts between public and private interests over waterways, aquifers and adjacent lands.

Technical advisory committee. Composed of engineers, scientists and regional planners. To review IEPA recommendations for accuracy and feasibility.

Statewide agricultural task force. Consisting of members of the agricultural community and citizens groups. To coordinate studies of pollution from farmlands and come up with strategies to control it. A major source of new information is a State Water Survey study now in progress on Lakes Vermilion, Shelbyville, Carlyle, Taylorville and Springfield. Pinpointing the sources of sediment in these lakes is of interest on another score — the worrisome loss of storage capacity in Illinois reservoirs, which contributed to water shortages this year.

Urban stormwater task force. Consisting of representatives from state and local government, sanitary districts, regional planning commissions and special interest groups. To analyze pollution from stormwater and snowmelt in Bloomington-Normal, Champaign-Urbana, Decatur, Kankakee, Quad Cities, Peoria, Rockford and Springfield. Steering committees assess storm sewer and runoff problems and devise control methods. Proposed solutions could be applied to other parts of the state.

At present, sanitary and storm sewers in most larger cities are combined so that some treatment of stormwater takes place. But during heavy rains, much of the polluted runoff flows directly into local streams, and in many small towns there is no treatment of stormwater at all. Research indicates that a medium-sized city discharges some 100,000 to 250,000 lbs. of lead and anywhere from 6,000 to 30,000 lbs. of mercury each year in runoff from storms.

Urban runoff in metropolitan Chicago and East St. Louis and acid mine runoff in parts of Southern Illinois are being tackled by three planning commissions with separate funding: **Northeastern Illinois Planning Commission, Chicago; Southwestern Illinois Metropolitan and Regional Planning Commission, East St. Louis;** the **Greater Egypt** and **Southeastern Illinois Regional Commissions, Southern Illinois.**

Aiming at a plan that is workable and understood at the local level, the IEPA is appointing coordinators for regional citizens advisory committees in each of the six water quality planning regions of the state: Northwest, Northeast Central, West Central, Southwest Central, Southeast Central and Southern. These committees are composed of citizens, public officials and special interest groups. There will be statewide public hearings on the plan once it is completed, but citizens are being encouraged to work with their regional advisory committees during the development stage when decisions are being made on what proposals best meet local needs. IEPA's public participation supervisor for the program is **Chuck Kincaid (IEPA, Water Pollution Control Division, 2200 Churchill Road, Springfield, Ill., 62706; phone: 217/782-3362).**□

By GEORGE PROVENZANO

Reprinted from Illinois Issues, June 1977

Natural gas supply and regulation

Keeping Illinois warm

THE WINTER of 1976-77, one of the coldest in decades, brought the people of Illinois face to face with the nation's chronic gas shortage problem. As the mercury dropped, gas consumption increased to near record levels, but because of insufficient supplies, several utilities in the state were forced to reduce or to terminate gas deliveries to large industrial users, commercial establishments and some schools in order to maintain service to residential customers. While gas cutbacks to users in Illinois were not as sharp as those in Ohio, Pennsylvania, or New Jersey the situation here could easily have been much worse.

The problem in Illinois

Cutbacks in retail gas service by utilities in Illinois and other states are symptoms of a long-term national problem that has become increasingly serious in recent years. Simply stated, the problem is that overall gas demand exceeds supply. Since 1971, production of natural gas for delivery to interstate pipelines has been less than demand even though estimated reserves of natural gas are more than adequate for meeting the nation's needs. An important element of the shortage problem stems from Federal Power Commission (FPC) regulation of the gas industry. The federal Natural Gas Act of 1938 provides FPC with authority to establish rates for transporting and reselling gas in interstate commerce. The government controls transmission rates because pipeline companies are viewed as having monopoly power over the shipment of gas from the point of production to the point of retail distribution. FPC determines transmission rates in the same manner as the Illinois Commerce Commission determines retail gas and electric rates. In 1954, in a controversial decision (*Phillips Petroleum Co. v. Wisconsin, et al.* 347 U.S. 672) the U.S. Supreme Court ruled that FPC was also required to regulate the price at which producers sold gas to interstate pipelines. Prior to the decision, increases in the wellhead price of gas were automatically passed on to consumers. It was argued that although transmission rates were regulated by the federal government and retail gas rates by state public utility commissions, consumers were not protected from increases in wellhead prices which were controlled by producers. In order to prevent unjustified price increases, the court held that FPC had a mandate to regulate wellhead prices.

During the 1960's, FPC followed a policy of holding wellhead prices down. As a result, the price of gas paid by pipelines did not increase in step with the costs of production or developing new supplies. Producers had little incentive to increase gas production for delivery to interstate pipelines or to explore and drill for new reserves. The latter is reflected by a decline in proved reserves of natural gas beginning in 1967, when, for the first time, annual production exceeded annual discoveries and additions to reserves.

Declining reserves, of course, may indicate more severe gas shortages yet to come. Total marketed natural gas production has also declined, but only since 1973. Furthermore, the latest FPC gas production statistics show that the decline in marketed production is leveling off at 20,000 billion cubic feet (BCF) per year. This indicates that gas production has not yet been noticeably constrained by declining reserves, a trend which obviously cannot continue indefinitely.

To understand why there are gas shortages in some states but not in others, one must distinguish between gas production from "new" wells and production for "old" wells. New wells are those that have begun to produce in the last three to four years. Gas from these wells is increasingly being consumed in the state in which it was produced. Since 1971, total sales of natural gas by producers to *inter*state pipeline companies have declined steadily, while at the same time *intra*state sales of gas have increased rapidly. The price of gas sold in intrastate markets is not regulated by the FPC, and in some producing states, intrastate gas customers are outbidding pipelines for supplies by buying gas at prices considerably higher than FPC currently allows interstate pipelines to pay. The growth of large intrastate markets — especially in Louisiana, Texas and Oklahoma, three states which currently account for over 80 per cent of the nation's natural gas production — is absorbing potential new gas supplies for interstate markets.

The combination of declining production from old wells, declining sales of natural gas to interstate pipelines, and increased intrastate consumption of gas from new wells is preventing interstate pipelines from purchasing adequate supplies of gas. At current regulated wellhead price levels, pipelines cannot obtain enough gas to meet contractual requirements, and they have been forced to curtail gas deliveries to gas distribution companies. Because about 90 per cent of gas sold by interstate pipelines is delivered to distributors, who in turn provide natural gas to ultimate consumers, reported curtailments reflect reductions in supply

GEORGE PROVENZANO
Economist at the Institute for Environmental Studies at the University of Illinois, Urbana, he is a member of a technical advisory task force of the Gas Policy Advisory Council for the Federal Power Commission.

at the wholesale level. Because many pipeline customers have sources of gas supplies other than interstate transmission, pipeline curtailments do not affect consumers as much as the curtailment figures reported by the Federal Power Commission would indicate.

Fortunately, this has been the case in Illinois where recent curtailments reported by the FPC have been the largest in the country. Curtailments by interstate pipelines to utilities in Illinois suddenly jumped from an average of 12.8 BCF per month in the first quarter of 1976, to over 34.1 BCF per month in the third quarter. Total curtailments for the six-month period from April through September alone amounted to 197.7 BCF or nearly one-fifth of total gas sales in Illinois for all of 1975. Yet there have been no severe shortages in the state to date because several Illinois utilities augmented pipeline supplies with substantial quantities of gas that had been stored underground or produced by two large synthetic gas plants.

The supply from underground storage has been extremely important. At the beginning of 1976, Illinois utilities had stored underground reserves of over 376 BCF, which were equal to about 37 per cent of total 1975 gas sales. But the severe winter of 1976-77 has seriously depleted these underground reserves. If

What are the prospects for the next 5 to 10 years in Illinois?

curtailments continue at present rates or increase, gas utilities will have a difficult if not impossible time in restoring underground reserves to pre-winter levels. This leads one to ask: "What is the potential for gas supplies for next winter and for the winter after that? What are the prospects for gas supplies for Illinois consumers for the next 5 to 10 years?" To answer these questions some clear information on all sources of gas supplies is needed.

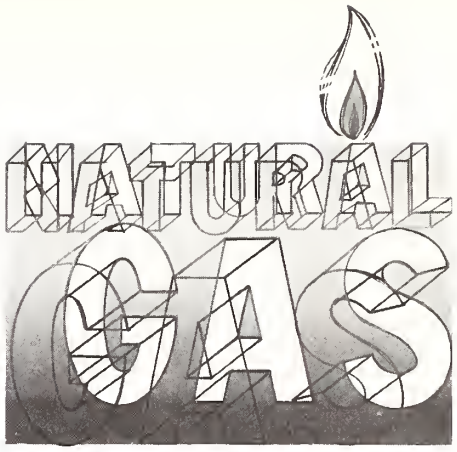
Potential sources of natural gas within Illinois include conventional reserves of natural gas, gas associated with shales and gas trapped in coal seams. For the most part, these sources are considered either too small or too costly to warrant extensive development at this time.

Some gas field development has taken place in Illinois, and in 1975 intrastate natural gas production amounted to only 1.4 BCF or slightly more than 0.1 of one per cent of total gas sales in the state for that year. But while natural gas sources in Illinois may undergo further development in the next 5 to 10 years, it is unlikely that intrastate gas production will increase much over current levels. Illinois must, therefore, continue to rely on interstate shipments of gas to meet the bulk of its needs.

U.S. reserves

Estimated reserves of natural gas in the United States are more than adequate for meeting the nation's needs for several years to come. The difficulty will be in getting that gas out of the ground and to consumers. The American Gas Association's (AGA) most recent estimate of total proved recoverable reserves of natural gas in the United States (including Alaska, and some offshore reserves) is 228,200 BCF. These are quantities of gas that geologic and engineering data demonstrate with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under present economic and operating conditions. This estimate represents about a 10-to-12-year supply for the nation at current rates of natural gas production.

The U.S. Geological Survey (USGS) has made estimates of inferred reserves and undiscovered recoverable resources of gas which, when added to the AGA's estimate of demonstrated reserves, may add another 25 to 40 years of supply at current rates of production. USGS estimated that inferred reserves — quantities of gas which with additional exploration will be added to demonstrated reserves through extensions and revisions of the estimated sizes of known gas reservoirs — will increase proved reserves by 200,000 BCF or 10 more years of supply at current rates of production. In addition, the USGS estimated that there is a 95 per cent probability that another 322,000 BCF of currently undiscovered but economically recoverable gas, will be discovered in the United States, and that there is a five per cent probability that as much as 655,000 BCF of recoverable gas will be discovered. In other words, there



is a 19 in 20 chance that at least the minimum and a 1 in 20 chance that the maximum amounts, respectively, of undiscovered gas will be produced in the United States. This gas is considered recoverable under present economic conditions, and at the present rate of production, these discoveries would add another 15 to 30 years of gas supply.

Exploration and development

In the face of increasing difficulties in purchasing sufficient quantities of gas to meet contractual requirements, many pipelines and their associated distribution company customers have initiated their own exploration and drilling programs. Historically, pipelines dealt solely with gas transmission; gas utilities dealt solely with distribution; and producers, who are primarily the major oil companies, developed new gas supplies. With supplies diminishing, many pipelines and distribution companies are now intending to produce for themselves the gas they can no longer purchase in the market place. With apparent encouragement from the Illinois Commerce Commission (ICC) gas utilities and pipelines that service Illinois have shown considerable foresight in establishing their own drilling and exploration programs. For example, over 20 years ago, Northern Illinois Gas Company, the largest gas utility in Illinois, formed a wholly-owned subsidiary, NI-Gas Supply, Inc., for the purpose of engaging in exploration and development activities. The ICC authorized Northern Illinois to invest a portion of its retained earnings each year in NI-Gas Supply, and that investment program is now paying dividends in the form of gas supplies to Northern Illinois Gas Company customers. As of the end of 1976, NI-Gas Supply had participated in the drilling of 367

successful wells, 92 of which were connected to pipelines servicing the parent company.

A recent sample survey of major pipeline companies showed that in 1976 estimated expenditures for lease acquisition, drilling and development increased by more than 75 per cent over 1975, and these companies plan additional increases in 1977. Of the pipelines which service Illinois, Natural Gas Pipeline Company of America, Panhandle Eastern, Northern Natural Gas Company, and Michigan-Wisconsin Pipeline Company have established exploration and drilling programs and are planning to increase investments in those programs in the next few years. Pipelines are concentrating exploration efforts offshore in the Gulf of Mexico and in the Rocky Mountain states where intrastate gas markets are weak. In both areas there are large tracts of undrilled territory which may enhance — *but cannot insure* — discovery prospects. It must be pointed out, however, that even after discovery, it takes two to five years before gas reaches the consumer. It takes that much time to complete the drilling, to install a gathering system, and to connect the field to an interstate pipeline.

To finance exploration and drilling activities, some pipelines have asked gas distribution companies to enter into advanced payment agreements. Under this kind of agreement, a gas utility makes an advance payment to the pipeline for gas that it expects to receive as a result of the development of a new gas field. If gas is not discovered, the advance is returned making it, in effect, a guaranteed, no-interest loan by the gas utility to the pipeline company. In Illinois, several gas utilities have been making advance payment agreements to supplying pipelines and producers since 1971 when gas shortage problems first became apparent. These agreements must be approved by the Illinois Commerce Commission, which to date has approved all requests. The first agreement of this kind involved Natural Gas Pipeline Company of America and, among others, Northern Illinois Gas Company, People's Gas, Light and Coke Company, and Illinois Power Company and financed a development in the Gulf of Mexico that is now supplying gas to Illinois.

Alaska will also provide a major new source of interstate gas supplies as soon as a gas pipeline to transport gas to the lower 48 states is constructed. Construction has not yet begun which means that deliveries of Alaskan gas will not begin to flow until 1982 or 1983 at the soonest. Yet to be decided is the selection of the pipeline route. One proposed route parallels the Trans Alaskan oil pipeline to the port of Valdez, Alaska, where the gas would be liquified and shipped via tankers to west coast ports. A second proposed route is up the Mackenzie River Valley to Edmonton, Canada, and connection with the Canadian pipeline network which in turn links up with the U.S. pipelines particularly for service to midwestern markets.

Finally, large quantities of imported natural gas from Canada, Mexico and several other countries will flow through interstate pipelines in the next 5 to 10 years. Canadian gas currently accounts for about 7 per cent of total gas sold by producers to U.S. interstate pipelines. U.S. pipeline companies are also planning to import large quantities of liquified natural gas (LNG). LNG import projects whose applications have been approved by FPC would supply 1,350 BCF of gas to U.S. consumers annually by 1981-82. Algeria is expected to be the source of 85 per cent of this supply and Indonesia, the remaining 15 per cent. Projects involving imports of an additional 2,170 BCF annually by 1985 are still in the discussion stage. This gas would come primarily from Iran and the Soviet Union.

Wholesale natural gas prices in the U.S., 1975-1976 (cents per 1,000 cubic feet)

	Average price of gas purchased by interstate pipelines		Average price received by interstate pipelines for gas sales		Average intrastate price
Source	July 1975	July 1976	July 1975	July 1976	April-June 1976
Domestic					
Average	36.7	43.6			
New contract*	56.2-73.6	79.8-101.5			
Canadian	120.8	168.4			
Total average	**41.7**	**53.2**	**84.6**	**101.8**	**158.8**

Source: Federal Power Commission
**Average quarterly prices for first and second quarters.*

Sources of synthetic gas

In addition to natural gas, Illinois utilities will use synthetic or substitute natural gas (SNG) in meeting the needs of their customers in the next 5 to 10 years. SNG can be produced from a variety of feedstocks including light liquid hydrocarbons such as liquid petroleum gas (LPG) and naphtha; heavy liquid hydrocarbons such as residual fuel oil and asphalts; and coal.

Coal gasification has received a great deal of attention in Illinois (see *Illinois Issues*, November 1976). Abundant coal reserves, adequate water supplies, easy access to pipelines and rail transport, and proximity to large markets make the state appear ideal for the development of a coal gasification industry. But the technology for producing pipeline quality gas from Illinois coal will not, in all probability, be available on a commercial basis until the mid-1980's. There are still many complex technical and financial problems which must be overcome before large scale coal gasification plants can be built. Operation of the first of these plants in New Athens has now been pushed back until 1983, and the demonstration phase of that project will not be complete before the mid-1980's. This means that the Coalcon gasification technology will not be implemented on a commercial basis until the early 1990's.

Unlike coal gasification, the technology for producing synthetic natural gas from light, liquid hydrocarbons such as LPG and naphtha is commercially available at the present time. There are now 13 such plants with an installed daily production capacity of 1.307 BCF in operation throughout the country. Two of these plants are in Illinois (one near Morris that has been operated by Northern Illinois Gas Company since 1974 and one near Elwood that has been operated by People's Gas, Light and Coke Company since early 1976) with a combined daily capacity of about .320 BCF. If operated at full capacity on a 335-day per year operating schedule,

these plants can produce over 100 BCF of gas per year or 10 per cent of total gas sales in Illinois for 1975.

The major difficulty with producing SNG from liquids is obtaining sufficient feedstock. As a result of the Arab Oil Embargo, the Federal Energy Administration (FEA) was created and given authority to regulate available supplies of all petroleum products. Under the Emergency Petroleum Allocation Act of 1973, FEA has established mandatory price and allocation regulations for determining the amounts of naphtha and other refined raw materials or feedstock that SNG plants can purchase. These regulations require all plants for which groundbreaking has occurred since May 1, 1974, to apply to FEA for assignment of a feedstock supplier and volume. FEA's policy on allocating petroleum feedstocks for SNG production has been quite restrictive and has effectively limited prospects of increasing gas production from liquids in the near future. In 1974, the agency took the position that SNG manufactured from petroleum products represented an inefficient use of energy resources because of the BTU's lost during the reforming process. Because of this stance, many SNG-from-liquids plants that were in the planning stages, including one large plant which was being planned for construction near Bement, Ill., have now been postponed indefinitely or cancelled. Plans to increase Northern Illinois Gas Company's plant by 50 per cent have also been postponed because of FEA regulations. Because it takes three to four years to construct and test a snythetic plant, it may be several years before even an immediate reversal of policy by FEA results in increased synthetic gas production.

FEA's view of the inefficiency of using petroleum products to produce gas is somewhat ironic for the following reason. Naphtha is primarily an intermediate petroleum product, with 90 per cent of naphtha production being used as blending stock for gasoline. The maximum efficiency with which energy in gasoline is converted to useful work in an automobile is 30 to 35 per cent, but the maximum efficiency with which energy in natural gas is converted into heat is about 80 per cent. Therefore, even allowing for the energy loss of converting naphtha to gas, the net capture of energy in end use with gas for heating is 2 to 2.5 times greater than with gasoline for transportation.

A second difficulty with SNG from liquids is the price. SNG, regardless of the feedstock, is more expensive to produce than natural gas. Gas produced from naphtha, for example, currently costs about 3.5 to 4.0 times the delivered wholesale or city-gate price for natural gas. Furthermore, naphtha costs, which account for over 80 per cent of the cost of producing SNG from naphtha, will remain high because of its competing uses in gasoline and petrochemical production.

The role of price

The price of natural gas will play an important role in determining the extent to which supplies of natural gas will become available in the next 5 to 10 years. As indicated above, for several years FPC kept the wellhead price of natural gas from increasing in a manner that would have stimulated production, a trend which that agency has now begun to reverse.

The table indicates the current structure and trend in natural gas prices in the United States. The average purchase price of gas from domestic producers is considerably below the purchase price of gas in new contracts, of gas sold in intrastate markets, or of gas imported from Canada. As interstate pipelines purchase more of the higher-priced, new contract gas to replace dwindling supplies of lower-priced, old contract gas, the wholesale price of gas will increase as it did from 1975 to 1976. In 1976 the Federal Power Commission increased the rate at which it would allow pipelines to purchase gas that has been developed since 1975 to a maximum of $1.42 per 1,000 cubic feet (MCF). This rate will automatically escalate by four cents per MCF annually. In addition, FPC also increased the maximum rates for gas which began to flow in pipelines in 1973-74 to 93 cents per MCF with an annual escalation of one cent per MCF.

Over the last few years, Congress has considered legislation to eliminate FPC's authority to regulate wellhead prices. One measure, which was passed in the Senate in 1975, specified immediate deregulation of new gas sales from onshore production and deregulation of gas produced offshore beginning in 1981. Similar bills have again been introduced in Congress this session. If adopted, this kind of legislation would cause new contract gas prices to approach the even higher intrastate prices. In response to emergency conditions created by last winter's cold weather, Congress did pass the Natural Gas Emergency Act of 1977. This act in effect deregulates wellhead gas prices temporarily. The law permits interstate pipelines to make emergency purchases of gas at prices above the $1.42 per MCF ceiling until July 31, 1977. The President has the authority to establish prices made under the act, and presidential discretion is expected to keep prices from rising above $2.25 per MCF.

Higher and escalating wellhead prices for natural gas are bound to result in increasing retail gas prices for several years to come, and in all likelihood, increases in wellhead prices will result in even greater than one-to-one increases in the price of gas to consumers. The compressors that move gas through pipelines are also powered by gas. Therefore, an increase in the wellhead price of gas also means an increase in pipeline operating costs which will be passed on to consumers as shown in the table.

Even with complete and immediate deregulation, however, average wellhead prices will not rise up to intrastate levels overnight. Higher wellhead prices for new contracts will be "rolled in" as old contracts expire causing the average gas price to increase slowly. In any year new contract gas supplies from domestic sources comprise only a small fraction of total gas under contract. The full impact of new contract prices will be realized only after the change has been in effect for 5 to 10 years.

Gas users in Illinois and throughout the nation will pay higher prices for gas in the next 5 to 10 years. Higher prices are needed to stimulate exploration and development for new supplies of natural gas. Higher prices will also encourage conservation and switching to other fuels. Natural gas will continue to provide the bulk of Illinois' gas needs in the next 5 to 10 years. Gas shortages will prevail until production for interstate transmission catches up with demand. Supplies will be augmented by LNG imports, SNG production from liquid hydocarbons, and perhaps to a small extent, by coal gasification. All of these alternatives are more expensive than natural gas.□

By SUE KENNEDY

The coal boom has a big bite: Gas plants would produce needed fuel but consume water and farmland

Reprinted from Illinois Issues, November 1976

The coal gasification industry is on the move in Illinois with over 29 sites for converting coal to natural gas and crude oil. Backed by federal, state and private funds, three demonstration plants are planned: New Athens, Powerton and Perry County, but hard allocation choices lie ahead — one commercial plant uses 14 to 28 million gallons of water daily and creates 5,000 tons of waste

SUE KENNEDY
Formerly a county government reporter for the *Illinois State Register*, she writes a monthly education newspaper for the Illinois Office of Education.

IN TEN YEARS, the nation's supply of natural gas will be almost gone, but there is a substitute and there is plenty of it in Illinois. The state's high sulfur coal can be converted, by an expensive and complex technology, into a substitute for the nation's dwindling supply of natural gas.

In Illinois, there are three coal gasification facilities scheduled which will make the state the national leader in the new industry. The New Athens (St. Clair County) and the Perry County plants will be constructed, and a third will be the existing Powerton Plant near Pekin which will be converted to the new industry. See the accompanying map for the 29 potential coal conversion sites in Illinois. Such an industry would require an extractable coal reserve of 150 million tons per site, which is the amount needed to supply a gasification plant over its 20-year lifetime. Each of these plants would require a mine complex producing about six million tons of coal per year, and each plant would produce 250 million cubic feet of substitute natural gas each day. A 1974 study by the Illinois Institute for Environmental Quality (IIEQ) identified five sites for commercial-size plants, besides the St. Clair County site — two in Fayette County, one in Franklin County, one in Washington County, and one on the Macoupin-Madison county line.

Vast coal reserves

Illinois is second only to Montana in measured coal reserves. Most of it is a highly sulfurous, bituminous variety which cannot be burned without measures to reduce sulfur dioxide emission into the atmosphere. Sixty-five per cent of the state (86 counties) contains coal deposits totaling approximately 161 billion tons. About 14 per cent of these reserves is found in seams lying less than 150 feet deep, according to a 1974 Illinois State Geological Survey report. But Illinois must provide more than its coal if it wishes to establish a sizable coal gasification industry in the state. A sizable chunk of Illinois land and water resources, some of them irreplaceable, must also be committed if industry is to be attracted to the state.

The conversion process

Balking at the cost of installing stack gas scrubbers to eliminate sulfur dioxide after burning, industry nationwide is turning to coal conversion. "You name a major oil company, and they've got a big budget going for coal gasification, and each thinks they've got the best process," said Jack Howard, manager of coal development in the Illinois Department of Business and Economic Development (BED).

The conversion process itself is relatively simple, although there are as many variations as there are companies involved. Basically, coal is heated in the presence of steam which causes some of the hydrogen in the steam to unite with the carbon in coal. This forms methane (CH_4), the principal ingredient of natural gas. Besides producing methane, the process also generates carbon monoxide and hydrogen. These two gases can be made to react to form more methane in a step called methanation.

During the gasification process, some of the carbon is burned in the presence of air (O_2) to produce the heat that makes the process work. This burning yields carbon dioxide as a waste product as well as ash and sulfur which can be sold or stored. To get a high quality gas, the oxygen content in the gasifier is increased, yielding a higher percentage of methane. In liquefaction, coal is heated to produce gas which then reacts

under pressure with hydrogen to produce a liquid plus leftover char. Industry's desire to scale this process to modern needs has spawned a profusion of pilot and demonstration plants all over the country in the past few years.

Illinois' first major coal conversion plant will combine the technologies of gasification and liquefaction to produce a high quality synthetic natural gas (SNG) that can be burned in homes and a low sulfur fuel for industrial use and liquid products. It will be located on 2,000 acres between New Athens and Fayetteville in the Kaskaskia River Valley in southeastern St. Clair County, approximately 30 miles southeast of St. Louis. BED's site proposal for the Coalcon project listed assets of the area including the existence of 1.6 billion tons of mapped coal reserves within the six township area surrounding the site — an amount which could provide "seven times the estimated 110 million tons required by the commercial plant over a 20-year period."

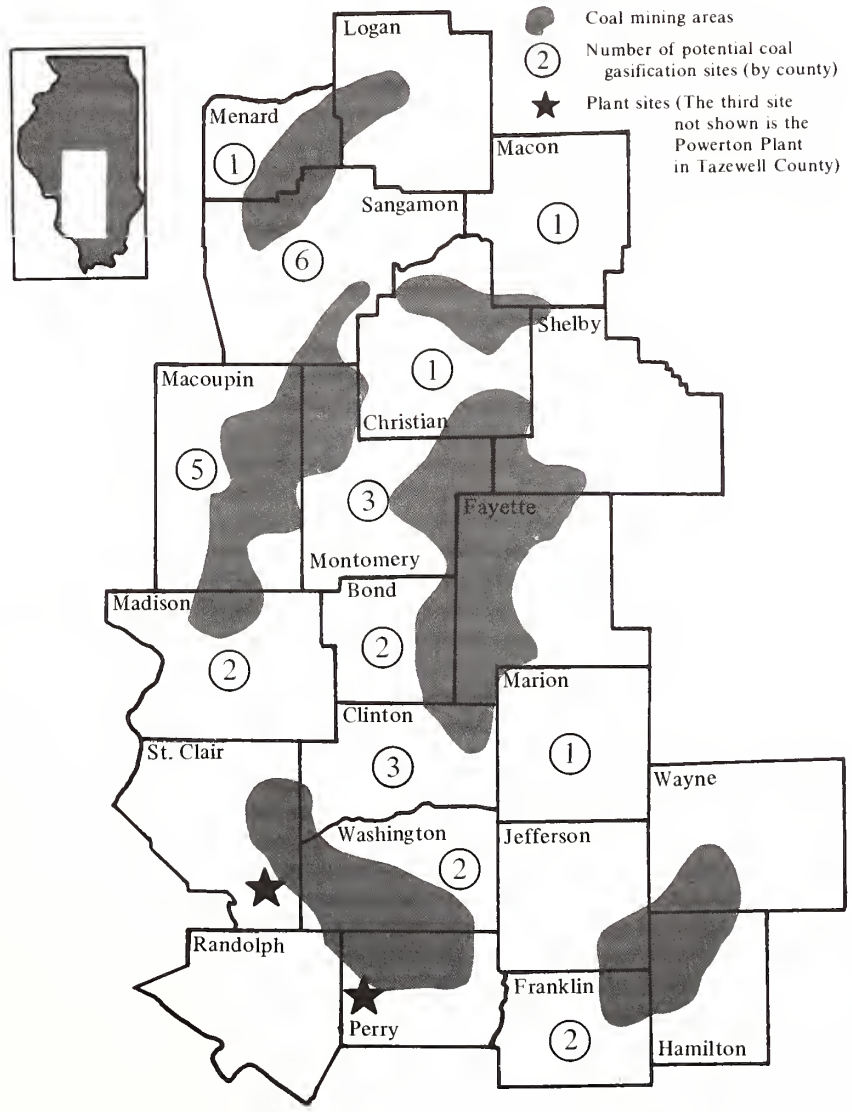
New Athens demonstration plant

Initially, the plant will be a demonstration model and will be purchased by Coalcon at the end of three years of testing. The federal Energy Research and Development Administration (ERDA) awarded the contract to Coalcon, a partnership since 1974 between Union Carbide Corporation and Chemical Construction Corporation (a unit of General Tire's Aerojet-General Corporation), and announced the site selection last November after examining 17 other sites in five states (Ohio, Pennsylvania, West Virginia, Kentucky and Indiana). The demonstration plant is to be based on a pilot plant run by Union Carbide in Lake De Smet, Wyo., over the past 10 years. It will be one-fifth the size of the commercial plant and have a design life of 20 years.

A high pressure hydrocarbonization process will be used to convert 3,850 tons of coal a day to 4,142 barrels of liquid and 20.2 million cubic feet of gas products in the demonstration phase. "Coalcon is taking advantage of coal's natural tendency to change to both a gas and a liquid in the conversion process," Howard explained. "It's harder to drive the substance completely to either a liquid or a gas." The greatest potential from coal conversion in Illinois is a coal chemicals industry, Howard said, reflecting Coalcon's focus on the liquefaction process. "Many products which were made from crude oil when it was cheap can be made from coal." Fuel oil and chemicals such as ammonia and naphthalene will be produced at the New Athens plant.

The sulfur produced in the process will be sold to make sulfuric acid, if possible. If it cannot be sold, the material will be given away or stored until it can be marketed. The ash yield, to be buried on the site, will be about 10 per cent of the total coal processed daily, or about 385 tons if 3,850 tons of coal are used. Besides coal supplies, other resources are needed to operate a gasification plant, and Coalcon executives believe those resources are available at the New Athens site. Nearly 2 million gallons of water, 80 per cent of which is totally consumed in the process, will be withdrawn daily from the nearby Kaskaskia River in the first phase. About 21 million gallons of water will be withdrawn for the commercial plant. Should supplies run low, a prospect designers say is unlikely, plans are being made to pump addition-

Potential coal gasification sites and their mining areas



Sources: The Institute of Gas Technology, Chicago and the Illinois Institute for Environmental Quality, Chicago

Specific state incentives proposed for the New Athens plant include water at no charge during the life of the demonstration project, cheap river frontage, extension of roads at no cost and a 5-10 year property tax break on leased lands

al water from the Mississippi River.

Electricity to run the plant will be supplied by the nearby Baldwin power plant. Transportation in the area includes the Illinois Central Gulf Railroad, U.S. Route 460, Illinois Route 13, and various natural gas and refined products pipelines passing close by the site. Also, barge service with the ability to transport up to 20 million tons of coal per year will be available on the Kaskaskia River following completion of the navigation channel in 1978. Finally, the metropolitan St. Louis area will provide the sizable construction, maintenance and operation crew.

The only real concerns with the site involve possible environmental problems in the future, according to proposal writers. "A well controlled coal conversion demonstration facility would not contribute sufficient particles and sulfur dioxide (to the atmosphere) to exceed the allowable increments. However, a commercial plant may create some problems because of its size." An environmental impact statement on the project remains to be done, although Coalcon completed an environmental assessment as part of selection criteria imposed by ERDA. The design phase is expected to take 18 months and cost $17 million. Construction is planned to start in 1977 with plant operation in 1980. The commercial plant is expected to be in operation by 1985.

Perry County and Powerton sites

The Perry County coal conversion facility, which will also employ liquefaction and gasification technologies, will be located approximately 11 miles southwest of Pinckneyville. In its demonstration phase it will produce 22 million cubic feet of pipeline quality gas and 2,000 barrels of crude oil per day from 2,300 tons of coal. Water will be piped from the Mississippi River, along a previously obtained, 17-mile right-of-way.

A $20 million engineering and development phase will begin immediately in Perry County. The Illinois Coal Gasification Group (ICGG), a consortium among Northern Illinois Gas Company, Aurora; People's Gas Light & Coke Company, Chicago; Central Illinois Public Service Company, Springfield; Central Illinois Light Company, Peoria, and North Shore Gas Company, Waukegan, was selected by ERDA (Energy Research and Development Administration) this summer to build the facility. Construction on the demonstration plant will begin in 1978 if Congress approves the funding. Commercial plant construction will begin around 1985.

Both the New Athens and the Perry County sites are nearly perfect locations for a coal conversion facility according to BED Manager of Program Development Rusty Glen. Land (previously stripped and reclaimed), water and coal are all readily available. The companies which will provide much of the coal for plant operation also own all the land needed for the facilities. "This makes it much easier than having to deal with several landowners," Glen says. About 65 per cent of the coal to be used in each facility will be taken from nearby mines. The rest will come from various parts of the United States and Europe, to test different grades.

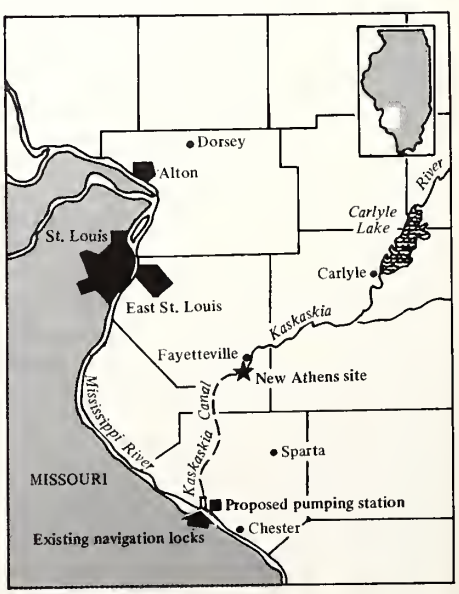
Lastly, ERDA gave the go-ahead this summer for an on-site coal conversion facility at Commonwealth Edison's Powerton Plant near Pekin. The facility will produce boiler fuel for use in the electric generating plant.

Although industry has done its part to bring coal conversion to Illinois, government has also aided the project. ERDA is financing the New Athens plant to the tune of approximately $110 million while Coalcon is sinking around $100 million into it, and the state of Illinois will contribute $25 million from coal development bonds.

ERDA will finance approximately 50 per cent of the $276 million Perry County project and the $105 million Powerton facility. The State of Illinois will contribute $7.2 million to the Powerton facility, and Commonwealth Edison will pick up the balance. ICGG presently plans to spend around $130 million on the Perry County plant. Illinois' share has not yet been determined, but could be around 10 per cent of the total project cost.

The Coal Development Bond Act

A string of state legislation passed in recent years has made possible the financial backing of coal conversion in Illinois. The Illinois Coal Development Bond Act (P.A. 78-1122), which passed in 1974, provides $70 million from the sale of bonds for financing a state research, development and demonstration program primarily in coal. BED (Illinois Department of Business and Economic Development) was granted extensive powers of eminent domain to acquire property, mineral or water rights for the development of such resources. And, an advisory council composed of the governor, lieutenant governor and heads of resource concerned state agencies was created to



advise the BED. Principal sponsor of the legislation was Sen. Bradley M. Glass (R., Northbrook).

At the same time, former Rep. Robert W. Blair (R., Park Forest), steered legislation through the General Assembly to create the Illinois Energy Resources Commission, composed of legislators and private citizens. In addition to recommending strategies for solving energy related problems in Illinois, the commission authorizes the issuance and sale of bonds for coal development projects it deems worthy.

The state commitment to coal development is firmly established. However, in the 1975 legislative session, the idea was expressed that perhaps the powers of eminent domain extended to the BED in the Illinois Coal Development Act were a bit too broad. Since the law had been enacted to give industry the incentive to develop coal resources, many thought it was not proper to give a state agency the power to condemn private land for private use. P.A. 79-713, sponsored by Rep. John S. Matijevich (D., North Chicago), amends the Coal Development Bond Act stating that the BED's power of condemnation be exercised "solely for the purposes of siting and/or rights of way and/or easements appurtenant to coal utilization and/or coal conversion projects." Another bill, H.B. 1704, sponsored by Rep. Adeline Jay Geo-Karis (R., Zion), was passed to amend the Illinois Coal Development Bond Act to provide for the development of other energy sources, but it was vetoed by Gov. Dan Walker.

Specific governmental incentives

In addition, to help make Illinois' high sulfur coal a bit more "usable" while coal conversion techniques are refined, Rep. Richard O. Hart's (D., Benton) legislation (P.A. 79-1099) directs the Illinois Pollution Control Board to set regulations for "intermittent control systems." The measure allows industries in low pollution areas to burn high sulfur coal as long as sulfur dioxide emissions do not exceed the minimums set by law. An intermittent control system entails setting up sensors around a plant to monitor emissions.

Specific governmental (state and local) incentives included in the BED's site proposal for the New Athens project offered industry:

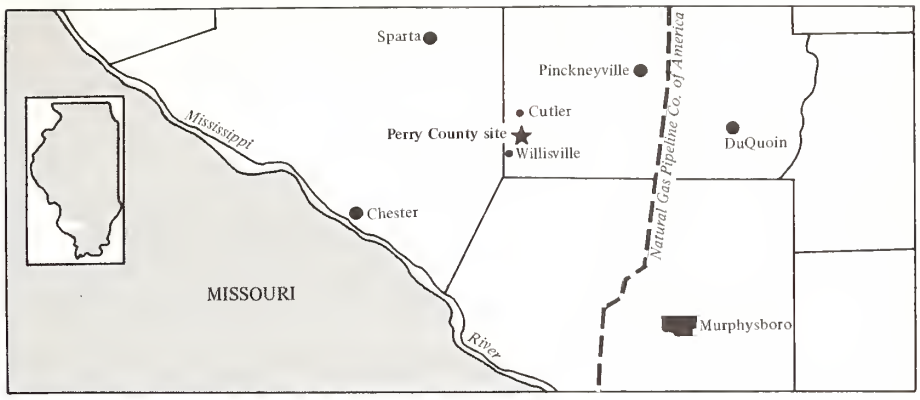
— water at no charge during the life of the demonstration project by virtue of state-owned land adjacent to the Kaskaskia River;

— lease frontage on the river for water intakes and discharge flumes from the state at an annual cost of $10 per foot of river frontage and $75 an acre of backland;

— extension of county roads to state highways at no cost;

— a tentative 5-to-10-year property tax moratorium for lands leased by the state (The county government also indicated there is wide discretion on valuation of the leasehold.);

— the use of BED's powers of eminent domain.



The proposal also noted BED's efforts to establish a U.S. Bureau of Mines research station at Carbondale, one of five in the country, for the study of coal mining and reclamation problems. A Coal Extraction and Utilization Resource Center also exists at Southern Illinois University at Carbondale for this purpose. Also, the proposal states that three southern Illinois colleges have programs to "train, retrain or upgrade workers for Illinois mines."

The impact of such an industry in several areas of Illinois would drastically affect not only the geography of the state, but its inhabitants as well. Water rights and loss of agricultural land are just two of the issues that will face Illinois citizens in counties where future plants are being considered. At least one community action group is concerned about the growth of the coal conversion industry in the state. According to members of the Illinois South Project, based in Carterville, the question that Illinois citizens need to ask regarding this new industry is: "Who will benefit from coal and energy development projects, and who will pay the long-term costs?" Project member Dave Ostendorf acknowledges that the coal gasification industry may bring certain benefits to the state and nation, but only if its growth is managed so as to have the least possible adverse effect on the environmental and economic bases of the states involved.

Tax costs

For starters, Ostendorf says citizens should be aware of the tax impact of any new plants on the community. For example, the 5-to-10-year tentative property tax moratorium originally offered by St. Clair County for lands leased by the state to Coalcon could put a heavy burden on New Athens taxpayers, he says. Community residents would have to bear costs for an array of municipal services for the large number of newcomers the plant is expected to bring. "It is imperative," Ostendorf said, "that any preferential treatment extended to industry does not result in an additional tax burden on residents of the community."

Ostendorf also points out that a commercial size coal conversion plant would require between 10,000 and 20,000 gallons of water per minute to operate. Between 14.4 and 28.8 million gallons per day would be entirely consumed in the process. The Illinois Water Survey has already identified 240 potential sites for gasification related reservoirs, according to Ostendorf. "Even if the water base were there," he said, "Illinois does not have a water permit statute that would control the rate and amount of water withdrawn from a natural watercourse or from groundwater or diffused water sources." Ostendorf said that the Illinois Economic and Fiscal Commission (a legislative study commission) made clear in *Water Resources Management in Illinois: A Program Review* (1974) that Illinois water rights law is largely an archaic and jumbled system of case law rather than

Loss of farmland might be reduced by deep mining, but the coal gasification industry could play havoc with Illinois' water supply unless water laws are changed and more reservoirs built

statutes, and that the system is heavily based on riparian rights which allow an owner of land adjoining a naturally flowing stream to use water at his own discretion. The report states that "it is still private ownership of riparian land which generates the recognized right to use water, and not consideration of social and economic impact."

Water supply

In regard to water supply, the commission's report stated, "There is still enough water in the state to meet current overall demand projections. A number of things could happen, however, which would change the situation dramatically. Two of the most important would be a substantial drought and the widespread use of coal gasification." The report adds that within 50 years, regardless of either impact, water supply problems can be expected in La Salle-Peru, Springfield, Carbondale, East Moline and Cook County. Ostendorf added, "The issue, it seems, is relatively simple: unless Illinois enacts a water permit statute or clearly delineates legal definitions of how much water can be withdrawn from a natural source, by whom and for what purpose, this water-consumptive coal gasification industry could play havoc with Illinois' water supply. Citizens must be assured, at the very least, that their municipal water supplies will not be interrupted."

One piece of legislation in this vein, H.B. 1786, was introduced by Rep. Thaddeus S. Lechowicz (D., Chicago) during the past legislative session as a result of the commission's study to establish a system of registration and permits for large uses of water. The measure, which was sent to the Study Calendar on Counties and Townships — where it stayed — would have created the Illinois Water Resources Authority. Similar legislation is being drawn up in the Illinois Division of Waterways. "Coal gasification has long been a concern to us," commented Bruce Barker of the division. "It's kind of a double-edged sword with regard to water supply. We need the water for energy production, but one coal gasification plant would use water like the whole city of Rockford or Peoria."

In addition to allocating water based on supply, he says a permit type statute applied on an area-by-area basis would help the state to direct large-scale users to regions of adequate supply. And, by rationing the naturally available stream flow, he believes industry will continue to augment Illinois' water supply with reservoirs. "We're really trying to prevent any cutthroat competition with this permit system. We want people to realize the effect their water usage has on their neighbors." The division's legislation would differ from H.B. 1786 primarily in that existing agencies would administer the program.

Glen of the BED predicts that such legislation will be law in three to five years. "There is need for a system of permits for water usage. Communities need to be able to plan for their water needs. This will institute a kind of 100-year growth limit to assure a reassessment of needs."

Agricultural land

Illinois South Project members believe that the impact of a widespread gasification industry on agricultural land in the state should also be assessed. They point out that Illinois, the nation's leading agricultural exporter, is losing farmland at the rate of about 100,000 acres per year, according to an Illinois Department of Agriculture estimate. "New coal mines — both deep mines and strip mines — along with a coal gasification industry, including the possible construction of new reservoirs, pose a quiet, but potentially severe threat to agricultural lands," Ostendorf said. "One high energy plant would require disposal of about 5,000 tons of solid wastes each day. If used as landfill, this would require 1,250 acres of land covered to a depth of 10 feet over the 20 year life of the plant."

One nonprofit energy research organization, the Environmental Policy Institute (EPI), based in Washington, D.C., claims that Illinois strip mine laws both directly and indirectly encourage the loss of farmland, and that 5,000 to 6,000 acres of farmland are lost to strip mining in Illinois annually. In a recent report, "Strip Mining in the Corn Belt," the EPI says the Illinois Mined Land Conservation and Reclamation Act and Rule 1104 encourages this loss due to the absence of any provision for determining pre-mining agricultural productivity or yield. "There are serious questions as to whether high capability agricultural lands strip mined for coal can be returned to their original capabilities within an acceptable period of time." It can take 10 to 30 years to restructure agricultural soil after strip mining, researchers say.

The loss of farmland can be lessened through the use of deep mining, however, the report states. "There is more deep-minable coal in four Illinois counties — Jefferson, Macoupin, Montgomery and Sangamon (22.3 billion tons) — than there is strippable coal in the entire state (19.5 billion tons). In fact, there is more deep-minable coal in Illinois than there is strippable coal in the entire nation." In regard to Illinois' importance as an agricultural state, the report adds, "As of 1975, Illinois accounted for 15 per cent of the nation's export shares for feed grains and feed products, ranking second in the nation, and 16 per cent of the nation's export shares of soybeans and soybean products, ranking first in the nation." Illinois South Project members and others concerned about the growth of the coal conversion industry believe Illinois citizens have not had a great deal of influence to date on governmental decisions which are accelerating what is termed "the new coal boom." Ostendorf concludes, "If citizens are to have any voice concerning the siting and development of new plants, they must work quickly to recapture their role in governmental decision-making processes."□

Reprinted from Illinois Issues, April 1977

Washington

By TOM LITTLEWOOD

Clash of transportation interests basis of conflict at Alton locks and dam

FOR the midwestern agricultural heartland the port at New Orleans is the doorway to foreign markets and sometimes, to a profitable operation. In recent years, as railroad freight rates increased, more Illinois grain and other farm products were shipped by barge down the Illinois and Mississippi waterways. It has been estimated that it costs an Illinois farmer about a nickel per bushel less to transport grain to New Orleans by river barge than by rail — a $1,000 difference for 20,000 bushels. Returning upriver, the barges bring fuel and fertilizers to farms; and coal, petrochemicals and other commodities to the Chicago area.

The navigation system on the waterways is financed and maintained by the federal government, long a sorepoint for competing railroads. A vital public works facility — indeed the key commercial entryway to the entire upper rivers — is the locks and dam system at Alton just south of the confluence of the two waterways. This structure was built in the 1930's. Its sides are crumbling, and it is too small to accommodate the traffic. At the peak of the shipping season, barges are backed up for miles and must wait a full day or longer to pass.

Supported by their friends on the House Public Works Committee, the Army Corps of Engineers wants to build a new and larger structure two miles further downstream at a cost of over $400 million. Recognizing that this could be the first step toward an enlargement of the entire navigation system all along the upper waterways, the railroads are fighting the request before Congress. They claim the modernization could cost $10 billion eventually and include the future deepening of the existing 9-foot navigation channels to 12 feet, an objective denied by the Corps of Engineers.

The clash of transportation interests on Capitol Hill has special meaning for Illinois because the Illinois Central Gulf Railroad parallels the river route along much of the way.

Historically, no issue aroused American farm organizations to political action more quickly than that of freight rates. But agriculture's power in Congress is much less now than it used to be, and there are new wrinkles to the issue, notably environmental concerns. Sen. Gaylord Nelson (D., Wisconsin), and a leading opponent of the proposal to enlarge the capacity of the Alton facility, has stressed that the great rivers are valuable natural resources. Fish and wildlife would be significantly damaged by more commercial activity on the waterways, it is alleged, and their recreational use would necessarily be curtailed.

Basically, however, the quarrel is an economic one — between the barge lines and the shippers on one hand and the financially troubled railroads on the other. Although higher freight rates usually mean higher consumer prices, most urban representatives are more concerned about railroad employment. Some of the Chicago metropolitan area Democrats whose election campaigns were supported by contributions from railway unions are among the most ardent foes of the Locks and Dam 26 Project, as it is officially designated.

During the last session of Congress, the Senate Public Works Committee made a momentous decision by recommending that the project be approved on condition that the barge operators begin paying fees for using the rivers. Free access to the watery "roadbed" is one of the competitive advantages that has always rankled the railroads. Various presidential administrations tried without success over the years to establish a policy of charging the river users. But this proved to be such a controversial matter, stoutly resisted by the leaders of the House committee, that the issue had to be left for the new Congress now in session. The Army Engineers and their empire building, often in the name of routine river maintenance, are not so popular among metropolitan congressional members as they are among the public works committees, which explains why an earlier Alton enlargement request failed to clear the House in 1975.

Both Illinois senators are backing the replacement plan. Democrat Adlai E. Stevenson said it should not be necessary to either enlarge all the other locks or deepen the channel. He pointed out that more than half the 54 million tons of traffic which moved through the Alton locks in 1975 were destined for the Illinois Waterway, the remainder for the upper Mississippi. "The claims of double doomsday for the environment and the railroads have little foundation in fact," he argued. "It makes about as much sense to consign water carriers to a lesser facility, out of fear of a nonexistent 12-foot channel, as to force railroads to return to steam locomotives or airlines to propellor craft."

When he was in the Senate representing Minnesota, Vice President Walter F. Mondale criticized the railroads for their higher "peak demand" freight rate pricing, a practice he said was directed solely at the export grain trade. In each of the last two years the railroads did not have nearly enough hopper cars available to handle the harvest season demand at whatever their rates.

An alternative course is to repair the existing structure. Construction of a new facility would take eight years. In the meantime more of the increased traffic will have to be diverted to railroad cars that do not yet exist any more than the 12-foot channel does.□

FIRST HALF OF A TWO-PART ARTICLE by SUE KENNEDY

Reprinted from Illinois Issues, January 1976

Need for land use planning linked to population growth

Traditionally, zoning has been a local function. Now it is under fire, has outlived its usefulness, its critics say. To take its place, state land use formulas are urged, and legislatures, including Congress, have bills before them to this end

SUE KENNEDY
Formerly a county government reporter for the *Illinois State Register*, she writes a monthly education newspaper for the Illinois Office of Education.

ZONING is inadequate in regulating the intensity of development and providing for open spaces and preservation of natural resources.

Zoning and planning are not strongly related in most Illinois cities.

Zoning is often used to exclude racial or low-income groups from suburban areas.

Zoning has worked well for planning single-family residences, but falls short in the areas of large-scale, multiple unit planned developments.

Zoning often leads to growth centered around interstate highway interchanges and other major highway routes rather than evenly distributed growth.

Zoning enabling acts for county, township and municipal governments are unnecessarily duplicative with no apparent major differences in purposes or powers.

These charges against zoning are leveled by Illinois citizens in a 1971 Zoning Laws Study Commission survey and reflect a national trend to revamp outmoded land use practices. Local government officials, lawyers, teachers, skilled workers, farmers and businessmen reported their grievances to members of the legislative study commission, chaired by Rep. Eugene Schlickman (R., Arlington Heights). Subsequently, legislation was introduced to repeal present zoning enabling acts, and establish a new formula for Illinois land use. In addition, legislation entered in Congress in 1975 sought to redefine land use priorities to encourage greater environmental awareness. The legislation was designed to nudge state governments from haphazard to coherent land use policy.

Why a new system?

Clearly, the traditional zoning practices that have helped shape the face of this continent are under fire. Why? Many critics of zoning contend that the system has simply outgrown its usefulness. They say that when the cluster of basic zoning ideas was formulated in the 1920's it was to remedy problems vastly different from those we face today. Cities of the early 1900's were nightmares of poorly regulated development with no regard for safety, sanitation and building structure. Dirty factories, overcrowded tenements and widespread disease were the common denominators of city life. Eventually, society saw the need to protect its citizens from such conditions. Hence, zoning evolved as a police power, to be used as a tool to carry out local objectives put forth in a comprehensive plan, a general outline for the physical development of a community. Subsequently, municipalities, counties and townships were delegated individual power by the states.

Today, critics feel that zoning cannot cope with the problems of unbridled growth, urban sprawl and rampant private development. A no-growth attitude is emerging to replace the enthusiasm for community expansion-at-any-cost which was common in the 1950's and early 1960's. Sobered by the onslaught of development in major urban areas, citizens residing in pleasant natural settings have decided that compromise can no longer save their communities from urban glut. In Boulder, Colorado, two local organizations forced the first referendum in the nation to limit population size. The referendum was narrowly defeated, but Boulderites did pass a building height limitation, which has since been violated, and directed local officials to make a study of optimum population size.

Although the legality of such population control measures is not yet clear, statistics on projected population and urban growth have convinced some futurists they are necessary. The U. S. Bureau of Census reports that the

population will continue to rise at least until the year 2020 even though fertility rates in the United States are beginning to edge below the 2.1 replacement level. Reaching a "zero population growth" (ZPG) fertility rate (2.1) does not mean population immediately stops growing. This will only occur when the percentage of females of the child-bearing age diminishes over time. The fertility rate would need to remain at the replacement (ZPG) level for about 75 years before population growth would actually stop. Population pyramids for the United States presently show a very young population.

Fear loss of farmland

Also, statistics indicate that by the year 2000 urban regions in the United States will occupy one-sixth of the total land area as opposed to one-twelfth in 1960. Approximately 20 million more acres will become urbanized by 2000 A.D. Critics are disturbed because present zoning policies make it easy for developers to obtain valuable farmland through local tax assessments that force owners to sell.

In addition to the fact that land resources are finite, specific zoning practices have been attacked as favoring certain groups instead of all the people in a community. Developers often twist the arms of pliable local officials to put up housing units where no public facilities exist and no provision is made for them. Or, lacking consent, developers sometimes go ahead with a development project and force local approval because it would be too costly for the local community to halt the project. This lack of concern for adequate facilities most often occurs in leisure home developments which may later become part of the community proper. Planners, often answerable directly to local officials, are powerless to effect legitimate planning. Instead, decisions are often made on the basis of a narrow expediency and short-term economic considerations.

Problem of interests

There is also some evidence that zoning often works to exclude the poor by limiting the building of multifamily dwellings in certain areas. In the Zoning Laws Study Commission survey, respondents from Chicago indicated that "the well-to-do are trying to legislate their own conception of life and habitat." The common request was that "the State do something statewide in remov-

Status of State Activity Related to Land Use Management April 1975

	Enabling Legislation				Functional Programs								
	Municipalities	Counties	Regional Agency Advisory Only	Regional Agency Review Authority	Procedures for Coordination of Functional Progs.	Land Use-Value Tax Assessment Law	Surface Mining	Flood Plain Regulations	Power Plant Siting	Wetlands Management	Critical Areas	*Coastal Zone Mgmt. Program Participation	State Land Use Program (*See Code*)
Alabama	Yes	Yes	Yes	No	No	No	Yes	No	Yes	No	No	Yes	1
Alaska	Yes	Yes	N/A	N/A	Yes	Yes	Yes	No	Yes	No	No	Yes	2
Arizona	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	No	No	N/A	2
Arkansas	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	N/A	2
California	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	2
Colorado	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes	N/A	3a-c
Connecticut	Yes	N/A	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	2
Delaware	Yes	No	Yes	No	Yes	Yes	No	No	No	Yes	No	Yes	2
Florida	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	3a-e
Georgia	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes	No	Yes	2
Hawaii	No	Yes	N/A	N/A	Yes	Yes	No	Yes	No	No	No	Yes	3a-e
Idaho	Yes	Yes	Yes	No	No	No	Yes	No	No	No	No	N/A	2
Illinois	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	Yes	2
Indiana	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	2
Iowa	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No	No	N/A	2
Kansas	Yes	Yes	Yes	No	No	No	Yes	No	No	No	No	N/A	2
Kentucky	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	No	N/A	2
Louisiana	Yes	Yes	Yes	No	No	Yes	No	No	No	Yes	No	Yes	2
Maine	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	2
Maryland	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	3a-c
Massachusetts	Yes	Yes	Yes*	No	No	Yes	No	No	Yes	Yes	No	Yes	2
Michigan	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	Yes	2
Minnesota	Yes	Yes	Yes*	No	No	Yes	No	No	Yes	Yes	Yes	Yes	2
Mississippi	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	2
Missouri	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	No	N/A	2
Montana	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	N/A	2
Nebraska	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	No	No	N/A	2
Nevada	Yes	Yes	Yes	No	Yes	Yes*	No	No	Yes	No	Yes	N/A	3a-c
New Hampshire	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	No	Yes	2
New Jersey	Yes	No	Yes	No	No	Yes	No	Yes	No	Yes	No	Yes	2
New Mexico	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	No	N/A	2
New York	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	2
North Carolina	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes	Yes	Yes	3a-c
North Dakota	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No	N/A	2
Ohio	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	No	Yes	2
Oklahoma	Yes	No	Yes	No	No	No	Yes	Yes	No	No	No	N/A	2
Oregon	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes	3a-c
Pennsylvania	Yes	Yes	Yes	No	No	No	Yes	No	No	No	No	Yes	2
Rhode Island	Yes	N/A	No	No	Yes	Yes	No	No	Yes*	Yes	No	Yes	2
South Carolina	Yes	Yes	Yes	No	No	No	Yes	No	No	No	No	Yes	2
South Dakota	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No	N/A	2
Tennessee	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes*	No	No	N/A	2
Texas	Yes	No	Yes	No	Yes	Yes	No	No	No	Yes	No	Yes	2
Utah	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	N/A	2
Vermont	Yes	N/A	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	N/A	3a-e
Virginia	Yes	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No	Yes	2
Washington	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	2
West Virginia	Yes	No	Yes	No	Yes	No	Yes	Yes	No	No	Yes	N/A	2
Wisconsin	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	2
Wyoming	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	No	N/A	3a-d

State Land Use Program Code

1. No activity at state level.
2. Study (executive or legislative) or state legislative consideration underway
3. State land use program legislation enacted. Authorization for:
   (a) inventorying existing land resources, data and information collection
   (b) policy study or promulgation by agency or commission
   (c) identification of land areas or uses of more than local concern
   (d) regulation or management of land areas and uses identified
   (e) direct state implementation or state review of local government implementation

Source: U.S. Department of Interior Office of Land Use and Water Planning

*MASS.--Areawide Council for Martha's Vineyard has authority to administer controls. *MINN.--Twin Cites Metropolitan Council has regulatory authority *NEV.--Must be ratified by referendum.

*R.I.--Within coastal zone a development permit required. *TENN.--Power plant siting conducted by TVA only. *COASTAL ZONE MANAGEMENT--No state as yet has an approved CZM program.

'A first step would be for state governments to conduct research and do analysis on planning problems facing communities and make this information available to local planners'

ing the current parochialism concerning zoning and its inequities in application."

One respondent suggested regional planning commissions be set up in the state to help local government equalize planning for land use so that "an agency larger than the local government could force that government to conform to the same land use controls that it enforces upon its citizens."

Also, with the exodus from city centers to suburban areas, it is clear that land use problems have taken on a more regional significance. Suburban developments are far from places of employment and almost no developers plan for services like medical offices or hardware stores.

Speaking to this problem is a landmark case dealing with the validity of municipal zoning, *Euclid* v. *Ambler Realty*, 272 U.S. 365 (1926) which states that in the future there might be "cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way." According to a survey of the problem for legislators by the Council of State Governments, the fact that the decision-making power rests in local hands does not cause these problems. According to the study, the difficulty is that the criteria for decision-making are exclusively local.

Complaints are also heard that zoning cannot effectively implement a comprehensive plan. The zoning process demands that a particular use for each parcel of land be prescribed at the time a zoning ordinance is adopted. This method of planning does not allow for meeting community needs as they arise. Trying to accommodate public needs on a case-by-case basis when operating from long-term established assumptions inevitably allows for unplanned development. And, when provision for change has been made, critics contend that the comprehensive plan upon which the program is based has been amended so many times that no logical relationship exists between the plan and the ordinance. In short, zoning ordinances are often based on no plan at all.

One of the most cogent arguments expressed against present-day zoning practices is that they consist of a series of prohibitions rather than a well considered and comprehensive development plan. One respondent in the Zoning Laws Study Commission survey said, "Planning should be related to the overall physical, social and economic environment, not just legal precedent."

Those with more esthetic concerns want stronger measures to protect critical environmental areas and historic sites and provide for green spaces in development areas. Critics of this persuasion believe that land use should be based upon the physical capacity of the land to support development. Environmentalists point to delicate land in the Florida Everglades that cannot support extensive development. Recent evidence shows that construction robs the marshy area of its natural watershed, and the ecosystem is changing with the dryer environment. No one knows what rippling effects this will have on the entire area. When homes were built on unstable land in California, mudslides caused untold financial loss. And more recently, Florida residents have seen their homes disappear into underground sinkholes. Some have suggested that a form of environmental impact analysis be done on land before any development is allowed.

What have states done?

Many state and national study commissions have recommended that states recapture some of the land use regulatory authority granted to local governments. A first step would be for state governments to conduct research and do analysis on planning problems facing communities and make this information available to local planners. Other states have set statewide goals and policies that local planners must incorporate into their comprehensive plans. Still others have set specific regulations that must be met on a local or statewide basis. (See chart for overview of other states' land use controls.)

Vermont land use legislation, passed in 1970, includes a provision that requires state review if a development for commercial or industrial purposes involves more than 10 acres of land or a housing development of more than 10 units within a five-mile radius. The law also provides for discontinuance of scattered development along main highways and away from community centers because it causes "increasing government expense and loss of agricultural land."

Question of rights

Hawaii legislation, passed in 1961, created a seven-member state land use commission to delineate and oversee planning in four land use districts in the state: urban, rural, agricultural and conservation — subject to review every five years. Local governments can zone within the districts, except for the conservation district. Anyone wishing to use land not in accordance with a particular classification must petition the county planning commission or local zoning board of appeals.

Many are concerned that such laws calling for more centralized authority over land use are another sign of the end of private property rights and the American private enterprise system. Proponents respond that with an ever-growing population, considerations of public rights demand a much broader interpretation than when land was abundant. Preserving the quality of life may mean that many individual rights will be restricted by public concerns. There is always the question of whose private property rights are to be protected. Land use laws may restrict or at least reassess commercial and residential development, but they may better protect the private landowner and farmer from pressures to sell to developers. □

Next month: A discussion of land use legislation in Illinois' 79th General Assembly.

LAST HALF OF A TWO-PART ARTICLE By SUE KENNEDY

Reprinted from Illinois Issues, February 1976

Land Use legislation: The Illinois situation

At least 16 bills were considered in 1975 spring session, and four were passed, but only two became law because of vetoes

LAND USE PLANNING has become a matter of considerable concern to the General Assembly and the governor. This is indicated by the fact that at least 16 bills in this area were considered in the spring 1975 session and four were passed by both houses. However, only two of these became law. Because of veto activity, the other two failed. The two new laws are the Township Open Space Act and a Lake Michigan shoreline study commission act. A bill to give preferential tax treatment to open space was vetoed outright. A bill for the protection of agricultural areas ultimately failed when the Senate did not accept the changes proposed by the governor. The most significant change proposed by the governor would have made this bill applicable to home rule units by removing an exemption originally added by the Senate. These 16 bills and their sponsors are identified in the sidebar.

Schlickman's 1973 attempt

Land use came into focus as a legislative concern when a 1971 Zoning Laws Commission, chaired by Rep. Eugene F. Schlickman, charged that traditional zoning approaches were failing to meet modern needs for planning. For the past four years, Schlickman and members of the Zoning Laws Study Commission have sought to redefine Illinois' land use concepts. Schlickman's attempts in previous legislative sessions included 1973 H.B. 1123 (78th General Assembly) to set up a Division of Land Use Planning and Management in the Department of Local Government Affairs to act as a central coordinating point for state and local planning. The office would have had the power to develop and administer a state land use program within three years of the bill's passage. It would also have determined areas of environmental concern in the state and monitored development in specific areas.

A companion bill (H.B. 1122) for local governments, excluding home rule units, called for local comprehensive planning including the repeal of existing zoning enabling acts and an outline of new goals by which local governments would set up their own more specific regulations and restrictions for (1) preservation of natural resources, agricultural lands and historic buildings; (2) provisions for housing for all economic groups; (3) unit development density; and (4) open space. The bill would have expanded zoning powers to a "protective function" and established a Local Land Use Commission to conduct research on needs, population characteristics and problem areas in a community. However, no actual land use limitations would have been imposed on the localities by any higher governing body.

Both of these measures failed to pass the 78th General Assembly, largely due to opposition from the Illinois Municipal League, according to Schlickman. He reintroduced the local government bill (H.B. 800) last year in the 79th General Assembly but merely cosponsored a similar bill for state land use planning (H.B. 1491), introduced by Rep. Harry Yourell. H.B. 800 placed no specific restrictions on building density or limitation of development on local governments. Schlickman explained, "That's primarily the local counties' and municipalities' jobs. I don't think we should interfere in matters that would differ so widely from place to place. But this bill (H.B. 800) will give local planners the chance to reorganize their fragmented zoning and planning practices along more environmentally sound lines."

Schlickman became interested in such matters while serving on the village board of Arlington Heights, a community that has grown from a population of 18,000 in 1956 to over 70,000 today. "On the board I felt we weren't engaging in enough planning to implement zoning properly. I became extremely concerned about the way in which municipalities are played off one against another by development companies . . . . In bidding, the municipalities usually ended up reducing standards set up for sound planning," he explained.

The quality of zoning

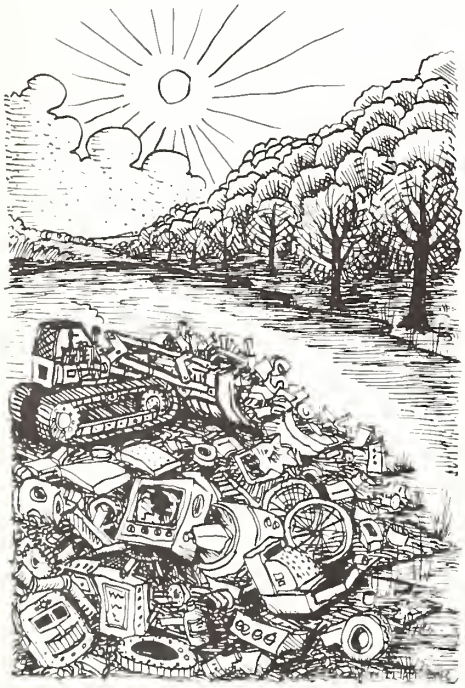
Schlickman says his bill emphasizes the idea that zoning is not an end in itself. It requires preservation of agricultural land, historical sites, environmentally critical land and provision for open spaces in developments — items not presently mandatory in most zoning enabling acts. "We are coming up with one uniform body of substantive law and procedures that will apply to all units of local government instead of counties, municipalities and townships all having different acts." Schlickman believes such uniformity will equalize the quality of zoning in adjoining municipalities. By tightening the rules by which municipalities can engage in land use actions, Schlickman says fewer zoning acts will be found unconstitutional in the courts. He adds that the bill emphasizes professionalism in planning.

Pointing to attempts by the 94th Congress to pass legislation calling for land use planning at the state level employing the carrot-stick inducement, Schlickman says such local reorgani-

SUE KENNEDY
Formerly a county government reporter for the *Illinois State Register,* she writes a monthly education newspaper for the Illinois Office of Education.

zation is "inevitable." In the 93rd Congress (1973-74) S. 268 sponsored by Sen. Henry Jackson (D., Washington) would have established, had it passed, an Office of Land Use Policy Administration in the Department of the Interior. The intent was not to preempt local responsibilities and priorities but to require states to (1) develop a planning process which met specific requirements for ongoing growth assessment, and (2) establish an agency to oversee land use planning statewide. States participating would have had to develop an identification process for environmental and economic concerns within three years of the bill's passage, and within five years, assure surveillance of land use practices through either state review of local decisions or direct regulation.

"Fragmented efforts on the part of governmental land use planning to date, environmental concerns, rapidly ex-



panding urban areas and the growth of private development concerns" were cited as reasons for needing a national land use policy. A federal Land Use Information and Data Center with regional branches would have been established as a resource for states developing land use policies.

Schlickman says his bill (H.B. 800) would direct planning in Illinois toward the goals which would have been set forth in the national legislation. However, the Illinois Municipal League believed Schlickman's bill was too strong, so the League's Land Use Subcommittee entered its own, H.B. 1731, sponsored by Rep. Edward E. Bluthardt.

Steve Sargent, executive director of the Illinois Municipal League, says that small communities with populations from 5,000 to 15,000 cannot deal with the amount of professional planning required in the Schlickman bill. "Our bill would modernize zoning laws but we've got to deal with political realities here. Municipal officials have had unusable planning up to the ears. They don't need stacks and stacks of plans filed on shelves. We relate zoning to planning in this bill, but it permits local governments to do planning without paying $50,000 to $60,000 to a professional planning agency," Sargent says. (Schlickman, however, insists his bill does not call for "hiring professionals" but for more "professionalism" among local planners.) Sargent adds, "Our bill doesn't encompass statewide planning at all. We are still totally opposed to state land use planning. This is traditionally a local issue. And we were opposed to the legislation in Washington."

Clauses in Schlickman's bill requiring the establishment of standards for neighborhood redevelopment and providing for a wide range of housing opportunities in a community were omitted from the Illinois Municipal League version because, Sargent says, "We don't feel those things have a place in zoning. We're not dealing with social problems in zoning."

Agricultural Association bill

In addition, Rep. Harry "Bus" Yourell introduced H.B. 1417, also nearly identical to Schlickman's local land use planning legislation. None of the bills passed the 1975 spring session. H.B. 800 was referred to the interim study calendar of the House Committee on Cities and Villages, and both H.B. 1731 and H.B. 1417 were referred to the interim study calendar of the Committee on Counties and Townships. At one point Schlickman had hoped his bill would be sent to the new House Committee on Environment, Energy and Natural Resources where he felt it would have had a better chance for passage.

Farmers, not content at seeing their land destined for suburban development and believing Schlickman's bill too general, devised their own legislation through the Illinois Agricultural Association. This bill, H.B. 898, sponsored by Rep. Joseph Fennessey, was returned to the legislature by the governor with recommendations for change, but these failed in the Senate. H.B. 898 would have allowed farmers in a local area to set aside at least 500 acres in an "agricultural district" to be used only for farming for at least eight years. Tax incentive would have been provided for those participating, but if the farmer decided to reverse his position and use this land for another purpose, a rollback penalty would have taken effect.

The governor's vetoes

The bill had been amended in the Senate to exempt home rule governments from its application, and Gov. Dan Walker's amendatory veto recommended among other things that this exemption be deleted. "The home rule provision is totally inconsistent with the purpose of this act, as expressed in the legislative findings, that urban development is one of the main threats to agricultural land," the governor said in explaining his return of the bill. But removal of this exemption constituted a "preemption" of home rule powers under Article VII, section 6 of the Constitution, which requires a three-fifths legislative vote; and supporters of the changes were unable to muster the 36 votes needed (33 for the governor's recommendations, 13 opposed).

Another bill that sought to encourage "open space" was vetoed by the governor. This was H.B. 729, sponsored by Rep. Lee Daniels. The bill would have given preferential property tax treatment to encourage the preservation of open spaces, but the governor said it was too broadly drawn, and in a press release September 16, he implied the bill would subsidize private golf courses. "I will not approve . . . special windfalls at taxpayers' expense," he stated. The House failed to get the three-fifths vote (107 members) required to override a total veto (89 for override, 48 to sustain the veto, 10 present). (See *Roll Calls* for complete tabulation of these votes on pages 25-26.)

A law for townships

A Township Open Space Act was passed by both houses and signed into law by the governor to become Public Act 79-422. Sponsored by Rep. John S. Matijevich, H.B. 853 permits townships

'The home rule provision is totally inconsistent with the purpose of this act, as expressed in the legislative findings, that urban development is one of the main threats to agricultural land,' the governor said in returning the bill with recommendations for change

after a referendum to establish an open space program. The law applies to townships in counties with a population over 200,000 and less than one million, and so applies only in DuPage, Kane, Lake, Madison, St. Clair, Will and Winnebago counties. Under the act, townships can acquire and hold land in a natural state and issue bonds to pay for it. Any "open space" so acquired must constitute at least 50 acres of land or water.

Two bills that sought to preserve or restore the natural character of certain Illinois rivers and wetlands were tabled. These were H.B. 461, the main bill, and 462, the appropriation bill ($75,000), sponsored by Rep. John C. Hirschfeld. Hirschfeld's main bill would have established five categories of natural rivers and wetlands under the Department of Conservation. Certain land uses would have been prohibited within one-eighth of a mile on either side of segments of the system. A Natural Rivers and Wetlands Board would have had to be petitioned for uses of the land described as incompatible in the act.

Lake Michigan bills

Relating to the Illinois Coastal Zone Management Program now underway in the Chicago area were several bills introduced by Rep. Robert E. Mann, known for his previous attempts to pass a "Lake Michigan Bill of Rights."

Under the Coastal Zone Management Act which passed Congress in 1972, Illinois is participating in a three-year planning program to devise a means of managing land use along its 59-mile coastal boundary. Ultimately, management grants will be made available under the act. The Division of Water Resources in the Department of Transportation is presently handling the program.

Mann's legislation included H.B. 2685 to avert development along the Lake Michigan shoreline until an implementation plan is adopted under the federal Coastal Zone Management Act, with the Lake Michigan Interim Shoreline Protection Commission regulating development in the meantime.

H.B. 2618 would officially require the Division of Waterways or other state agency designated to develop a shoreland management program for Lake Michigan under the Coastal Zone Management Act. And, H.B. 2839 would provide that all newly created islands, shoreland fills and other deposits and additions to the bed of Lake Michigan and other lakes are held in trust for the people of the state. All of the bills were referred to the study calendar of the Committee on Environment, Energy and Natural Resources.

The research groups

During the formulative stages of developing a management plan from which state legislation may eventually emerge, various groups are participating in data gathering and research projects. The Illinois Geological Survey is doing underwater mapping, the Northwestern Illinois Planning Commission (NIPC) is handling land planning studies, and the Lake Michigan Federation and the League of Women Voters are conducting citizen hearings. Other groups such as the Lake Michigan Shoreline Advisory Committee, composed primarily of municipal officials whose communities abut Lake Michigan, have been formed to speak to the issue.

The only measure regarding Lake Michigan to pass during the 1975 spring session was the Lake Michigan Shoreline Study Commission Act, H.B. 170, sponsored by Rep. Adeline J. Geo-Karis. The measure, also signed (P.A. 79-1032) by Gov. Walker, gives the commission the task of finding solutions to erosion problems along the shoreline and making recommendations on improving water quality. A report is due April 15.

Other bills proposed

Other attempts at dealing with the land use issue also entered as legislation last spring. Believing Schlickman's proposed commission too limited, Sen. David J. Regner has tried for two sessions to pass a bill to establish a Land Use Study Commission. The measure (S.B. 157) passed the Senate last spring, but the House referred it to the interim study calendar of the Committee on Counties and Townships. Rep. Richard A. Mugalian entered H.B. 338 to study the relation of all existing Illinois laws, regulations and agencies to land use and the effectiveness of their controls. The bill was passed in the House but tabled in the Senate.

Also tabled was the Green Belt Open Space Study Commission Act, H.B. 56, sponsored by Rep. Donald E. Deuster. It would have authorized an eight-member commission to study the impact of rapid urbanization upon farming activities, potential conservation areas and green belt areas in the state.

What Congress is doing

At the national level, H.R. 3510, sponsored by Rep. Morris Udall (D., Arizona) was killed in effect when it lost on the vote to report it to the full House by the House Interior Committee on July 15. S. 984, sponsored by Sen. Jackson, was the companion bill. These bills, alike in major policy provisions and including the components of S. 268 listed earlier, would have allowed grants to be issued to states for the development and administration of statewide land resource programs for the non-federal lands. Both bills contained sections requiring citizen and local government participation in planning, and S. 984 additionally included a major section on energy facilities planning. Both included Indian lands as units eligible to apply for land use program grants. Each bill outlined the major components of a state land use program: (1) matters of more than local concern, (2) decisions affecting key facilities, (3) large scale subdivision or development projects, (4) developments of regional impact, and (5) areas of critical state concern.□

Reprinted from Illinois Issues, April 1976

By JAY SMITH

Doesn't anybody want it?

County home rule

VOTERS in two Illinois counties, Winnebago and Lake, voted March 16 whether their county governments shall have home rule powers under the Illinois Constitution. If either or both of these referenda were passed, it will be a breakthrough for home rule in downstate counties (Our magazine went to press just before the election, and a complete report on the home rule referenda will be published in May.).

Cook has been the only Illinois county with home rule authority since the new Constitution was passed five years ago. The other 101 counties have the constitutional potential to achieve home rule status, but few have tried to pass the required referendum. After the new Constitution became effective, the home rule question was put on the ballot in 1972 in nine counties. All were defeated decisively. Four years have passed without any other counties voting on the question. Now, the counties of Lake and Winnebago are testing again whether voters in a downstate county will accept home rule county government.

What is county home rule?

What does it mean when a county government gets home rule? The new Constitution provides the basis for home rule powers (Art. VII, Sec. 6), but being so new in Illinois and with only Cook County's experience to study, there haven't been enough tests or experience to allow an exact definition; that is one reason voters may not want their county to have home rule. A county without home rule is basically a creature of the state, operating according to the statutes passed by the legislature. The difference for a county which has home rule is that it gains the power to rule itself — but not in every area of government. An analogy is our federal system: all states have the power to rule themselves except in areas where the federal government has precedence. Counties with home rule do not have complete autonomy from the state government. The new Constitution provides some limits and the Illinois General Assembly can and does specify in the laws it passes whether the power to regulate certain areas is reserved for only the state government. When state statutes reserve powers to the state government, such as licensing doctors, barbers, and other activities, they are preempting the power of a home rule county or municipality to pass ordinances in that area.

Instead of being able to list, item by item, the powers that home rule would give to a county, you have to search the laws to find the powers it does not have. When an area is in doubt, the courts usually decide.

The new Constitution's only requirement for a county to get home rule is to have an elected county chief executive officer. Cook County had such an officer when the new Constitution was passed, but no other Illinois county did. A county home rule referendum is actually a referendum on the question of creating the office of an elected chief executive officer for the county.

Any Illinois county wanting home rule will have to debate the merits and limitations of establishing an elected county executive, but this debate is likely to have less bearing on home rule referendum voters' decisions than are questions of taxation. Local home rule in Illinois clearly means added local taxing authority. Another developing source of possible resistance to county home rule referenda involves municipal officials and city residents who might see home rule for their county's government as a threat to their city's home rule powers.

Automatic for cities

Home rule powers are granted automatically to Illinois municipalities of more than 25,000 population by the 1970 Constitution. The Local Government Committee of the Constitutional Convention unanimously believed "that a system of home rule is superior to the existing system of legislative supremacy . . . ." But, the committee was not willing to allow a grant of home rule authority to county governments without some restructuring of those governments. The committee stated in its report:

> "that broad home rule powers should not be granted to counties which lack the basic governmental structure required to administer these powers effectively, efficiently, and fairly. Clearly the county should have a chief executive or administrative officer. All counties exercising home rule powers in this country have some form of separate administrative official."

Consequently, Article VII, Section 6 of the 1970 Constitution imposes the requirement of an elected chief executive as a prerequisite for county home rule.

Advantages, disadvantages

The advantages and disadvantages of the county executive form of government have been summarized in an article, "Forms of County Government," *1975 County Year Book*, published by the National Association of Counties (NAC) and the International City Management Association (ICMA).

Among the advantages listed are that the elected executive form: (1) provides for the most visible kind of policy-

JAY SMITH
A former elected member of the Champaign County Board (1972-1974), he is now a field administrator for the Urban Counties Council of Illinois.

No downstate county has yet opted for home rule. The uncertainties of the system may explain why voters have had cold feet

making leadership; (2) provides the kind of leadership needed when there is diversity and lack of consensus; (3) is more responsive to the public will; (4) generates greater visibility and prestige for the county; and (5) creates the best system of checks and balances because of the separation of powers.

Among the disadvantages mentioned are: (1) a danger of "bossism" with an over-concentration of political power; (2) excessive demands on the executive — few persons have the talents to be both a political leader and administrator; (3) potential for executive-legislative conflict (particularly where the elected executive represents a different party than that represented by the board majority); and (4) costliness because of the executive's need to hire expert assistance to conduct the day-to-day county operations.

Elected county executive

Many opponents to the passage of county home rule referenda in 1972 in Illinois charged that the executive might become a "county political boss." If a county home rule proposition is adopted at a March primary election under the terms of Public Act 79-396, effective last October 1, the new chief executive is elected at the next general election. The nomination of candidates by the major political parties for the office is made by the county central committees rather than at a special primary. But this does not apply at subsequent elections.

Many of those directly involved in county government are basically satisfied with the system as it is. Legislative and administrative decisions are made by the board and/or board committees with each independent elected official (clerk, treasurer, sheriff, etc.) possessing full administrative authority in his own statutory bailiwick. They see no particular need for more unified executive leadership. To the extent that the advent of home rule and the election of a county executive would upset the status quo, home rule is unacceptable to many county officials.

The status quo

An alternative view is that home rule and the election of a county executive would not go nearly far enough in realigning authorities of county officials in the existing system. John Wenum, a member of the Local Government Committee at the Constitutional Convention and currently a member of the McLean County Board, is a firm supporter of county home rule. However, he feels that the mere selection of an elected county chief executive does not completely address the issue of the fragmentation of authority in county government because it leaves untouched the system of electing other county officers, i.e., the clerk, treasurer, sheriff, etc. At a reconvening of the Local Government Committee in 1974, Wenum said, "You have to substantially alter the elected officer structure of the counties or you're just adding one more elected official, and that would not be rationalizing the system."

Several observers have suggested that the Constitutional Convention ignored other structural streamlining options, especially the option of an appointed county administrator, who could have served as an alternative to the elected county executive. The Local Government Committee considered but rejected an appointed administrator option. The committee thought the elected executive the best method of achieving policy leadership and that election was more consistent with democratic ideals. But, the committee stated, "It should be made clear that the requirement of an elected chief executive does not preclude the possibility, if authorized by statute, that a county manager, an administrative officer, could be appointed and delegated many of the executive official's duties."

Nationally there are 64 counties with *elected* chief executives, primarily in counties with populations from 100,000 to 600,000, while there are about 550 counties with *appointed* chief administrative officers. In states where there are elected county executives, the authorities of the executive are generally defined by local charter; only in Wisconsin, Delaware, and Illinois are the duties of the elected county executive prescribed by state statute.

Powers of county executive

The County Executive Act, passed in 1971 after the adoption of the new Constitution, delineates the powers of the elected chief executive (*Ill. Rev. Stat.*, Ch. 34, sec. 709), whose duties include:

1. Execute orders and resolutions of the board;

2. Coordinate and direct the administrative affairs of the county, except the offices of elected county officers;

3. Prepare and submit to the board an annual county budget;

4. Appoint, with the advice and consent of the board, persons to various boards, commissions, and special dis-

'the man in the street may perceive the broadened taxing powers of a home rule unit as a threat to his pocketbook'

tricts;

5. Approve or veto board ordinances, with a 3/5 board vote required to override vetoes;

6. Preside over county board meetings, with no entitlement to vote.

The members of the Local Government Committee who reconvened in 1974 seemed to feel that they should have offered, more expressly, a county administrator option as a path to home rule. Stephanie Cole, who has monitored home rule since its constitutional inception for the University of Illinois Institute of Government and Public Affairs, has suggested that "if a county is not going to attract professional management into the executive position it may make county management conditions worse than they are presently." She advises those who favor the passage of county home rule referenda to stress that a professional administrator may be appointed to assist the elected executive.

Law can be changed

Philip Elfstrom, chairman of the Kane County Board, is a strong proponent of the elected executive system. When asked whether the elected executive may not be qualified as an administrative manager, Elfstrom declares, "It's like electing the president or governor — you take the same chance." He contends that an appointed administrator, in order to be effective, must have a strong elected official backing him. Elfstrom believes, however, that modifying the County Executive Act to allow the county board to select its own chairman to preside over board meetings, rather than having the county executive do so, would develop a clearer separation of powers and make home rule with an elected executive somewhat more palatable.

Just as the office of county elected executive is perceived by some county officers as a threat to their status, the man in the street may perceive the broadened taxing powers of a home rule unit as a threat to his pocketbook.

The Illinois Constitution places limits on local income taxes and occupations taxes and on licensing for revenue, but Cook County and various municipalities have employed their home rule authority to establish a variety of local taxes not available to non-home rule units. Cook County has used its home rule authority to implement a tax on the retail sale of new motor vehicles; a wheel tax in unincorporated areas; a liquor, beer, and wine tax; and a mobile home privilege tax. Some examples of municipal home rule taxes include a cigarette tax, an employers' expense tax, a gasoline tax, a hotel-motel tax, and parking tax. In addition, some home rule units have established property tax levies above statutory ceilings and have issued nonreferendum bonds.

New taxing powers

Supporters of county home rule do not deny that home rule means more expansive county taxing authority, but they point out that existing home rule units have been temperate in their use of taxing powers and they stress that home rule permits a different mix of local taxes, more suitable for local conditions than state statutory mandates. Home rule proponents contend that the counties' present revenue structure is skewed toward a strong reliance on the property tax, and as county expenditure demands increase, the only added revenue source the General Assembly and the governor appear willing to grant counties are permissive incremental increases in property tax ceilings (H.B. 229, H.B. 886, and S.B. 336 are examples from the 1975 session). Home rule, its supporters assert, would allow counties to develop revenue sources other than the real property tax according to local conditions of acceptability. Proponents further argue that any taxation decisions would be made under closer local voter scrutiny than are state legislative decisions. "We're grown up now and we want the action to take place at home where people can watch us," says Peter Perrecone, a Winnebago County Board member and a home rule advocate.

The belief that "home rule will result in higher taxes" was the primary reason for the defeat of home rule referenda in nine counties in 1972, according to a survey by the Center for Governmental Studies of Northern Illinois University. Ninety per cent of the survey respondents cited it as a factor.

On the question of conflicts between a home rule county government and a home rule municipality in the same county, the constitutional framers were careful to provide: "If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction" (Art. VII, sec. 6(c)). The Local Government Committee noted in its report that one of the purposes of Article VII was to strengthen counties as an adjunct to municipalities, and in some cases as an alternative to municipalities, but the committee felt that any substantial transfers of authority among local governments should come from the General Assembly.

The effect of one significant Illinois Supreme Court decision may be to increase the skepticism with which municipal officials and municipal residents regard county home rule. In a 1972 case, *City of Evanston* v. *County of Cook*, the court upheld the home rule authority of Cook County to impose a retail sales tax on the sale of new motor vehicles within the county including inside city boundaries. One consequence of the decision was that Evanston, which had considered imposing a similar tax of its own as a home rule municipality, made a policy choice not to impose such a tax on top of the county's tax. The court did not say that Evanston was legally preempted from imposing its own like tax, but the practical effect of the decision is that for reasons of potential unpopularity with taxpayers, municipalities within counties with countywide home rule taxes are somewhat more restricted in imposing their own home rule taxes than are home rule municipalities in non-home rule counties.

Cities versus counties

Some municipalities may fear home rule status for counties since home rule would give a county the power to deliver the entire range of urban services to unincorporated areas — and this might alter the traditional annexation growth of municipalities in the county. On the other hand, county home rule advocates argue that strong county government might lower the costs of municipal and

special district governments, and thus lower the cumulative bill for local taxpayers. Counties could address the problems that overlap municipal boundaries, such as air pollution, transportation and water quality. For municipalities to attack these concerns would in many cases be either too expensive or ineffective because of the lack of coordination with neighboring municipalities. If special districts or appointive regional bodies were responsible for these areawide problems, electoral accountability would be sacrificed. Supporters of county home rule claim that home rule, in conjunction with intergovernmental cooperation powers, would give Illinois counties the kind of authority needed to become the "middle level" general purpose government that seems to be required to address contemporary problems like air pollution, transportation and water quality.

There are other arguments for and against county home rule. Proponents argue that: (1) county officials, rather than state officials, best know local needs; (2) the legislature often does not understand the full implications and costs of obligations it imposes on counties — home rule would give some relief; (3) county home rule would free the legislature of the burden of a large volume of bills dealing solely with county government; (4) home rule would give county governments authority they may not presently have under Illinois statutes to receive particular federal grants and thus give Illinois taxpayers a greater return of federal dollars; (5) county home rule would generate creative local initiative in problem solving; and (6) county home rule would increase citizen participation at the local level.

Critics of county home rule offer these arguments: (1) county governments serve vested and parochial interests, and home rule would merely augment the authority of those interests; (2) county home rule would conflict with the need for uniform performance levels on certain programs throughout the state; (3) there would be serious problems in the transition of a county to home rule because of abrupt organizational changes; (4) home rule for counties simply adds to the aggregate level of governmental authority in the system; and (5) county home rule would cause excess spending.□

Resounding 'No' vote on county home rule

VOTERS in Lake and Winnebago Counties turned down county home rule resoundingly on March 16. In the heaviest primary turnout ever in Lake County (41 per cent of registered voters), home rule received only 13,612 "yes" votes against 51,071 "no." The referendum question fared even worse in Winnebago County, where the proposition was defeated by a five-to-one margin. Lake and Winnebago Counties were the first to vote on county home rule since the issue was defeated in nine counties in 1972. In both counties the question was placed on the ballot by voter petitions, rather than by county board resolution, and in both counties the margin of defeat was substantially larger than in 1972.

In neither county was there a substantial advertising campaign either for or against home rule. The opposition ads in Winnebago County listed the names of prominent opponents matched against a list of less prominent supporters. Opposition advertising in Lake County stressed that Cook County had used home rule to impose a number of new taxes. Home rule had the support of the League of Women Voters in Winnebago, and in Lake the Waukegan Chamber of Commerce backed the issue (though its president opposed home rule, and he was also defeated in his bid for nomination for a county board seat). The *Rockford Morning Star* and the *Rockford Journal* editorialized against home rule passage, as did Joe Kirby, columnist for the *Waukegan News-Sun*. Other declared opposition in Winnebago County included the Republican Party Central Committee, township officials, the board of realtors, the county clerk, and the county recorder of deeds. The Rockford Civic League and the Rockford Chamber of Commerce refused to back home rule in the absence of any county board adoption of tax ceiling guidelines. A special citizens' home rule committee had recommended such guidelines, but the Winnebago County Board failed to vote on their adoption.

Curiously, three Winnebago County Board incumbents who were strong opponents of home rule were defeated in their bids for renomination to the board, while the more outspoken home rule supporters won their primary contests. One analyst in Winnebago County attributed this occurrence to a "voter distrust of the county board itself, rather than a disaffection with the concept of home rule. How the board would implement home rule was the real concern."

Without question, one of the primary causes for the voter rejection of home rule in both counties was a concern about the tax possibilities inherent in home rule. In a separate March 16 referendum vote in Lake County, a tax levy for the county historical museum was turned down by more than two-to-one. Uncertainty about the powers and expected performance of the elected county executive that home rule entails was undoubtedly another deciding factor. More broadly, the voters were apparently unwilling to vote affirmatively on a concept like home rule that initially seems abstract and without limits. Although several meeting and media programs on the home rule issue were conducted in both counties, there was little time for full public discussion of the home rule case law or the actions of other Illinois home rule units. Perceiving an unknown, the people voted "no."

Supporters of county home rule now go "back to the drawing board" to plan future strategies for county government reform. Prospects for home rule referendum passage now appear bleak for most counties, though an extended educational campaign involving broad citizen participation might enhance the chances of passage in certain counties. Winnebago County home rule supporters are now talking about such a campaign, and Lake County is activating a citizens' county government study commission, with home rule a significant issue on its agenda (the commission was created in January, prior to the vote on home rule).

At least two indirect consequences of the referenda in Lake and Winnebago Counties ought to be noted. In Lake County the referendum debate clearly generated discussion of, and perhaps gave impetus to, non-home-rule county government reforms. Serious consideration is being given to a referendum to reduce the county board size and another referendum to provide for the election of the county board chairman at-large (rather than by the board itself). Another likely indirect effect of the county referenda campaigns is that home rule actions of municipalities in those counties will now come under closer citizen scrutiny, with the threat of a repeal referendum perhaps more of a possibility than it was before the county votes.

How the General Assembly will react to these county home rule defeats remains to be seen. Given the strong home rule stance of the City of Chicago, the Illinois Municipal League, and Cook County, it is unlikely that there will be any substantial increase in the number of home rule preemption bills passed. Whether the General Assembly will now find new cause to either create or deny non-home-rule county form, function, and finance options is an unanswered question.□

Reprinted from Illinois Issues, April 1977

Chicago

By CHARLES B. CLEVELAND

The death of Chicago's first all-powerful Democratic boss

THE GREAT Depression that started with the crash on Wall Street in 1929 had fully hit Main Street, U.S.A., within three years. Factories closed; men waited in breadlines for a handout, wheat went down to 34½ cents a bushel, corn to 20 and still there was no market; unemployment hit some 17 million people.

Franklin Delano Roosevelt was elected in November 1932 as people looked for leadership out of the economic disaster, but — in those days — the President didn't take office until March. Roosevelt had come south for a fishing vacation and was coming to the Bayfront Park in Miami, Fla., on February 15, 1933, for a brief speech before boarding a train back North.

Also in the crowd was Anton Cermak, mayor of Chicago and the first all-powerful Democratic boss in the city's history. He had made few political mistakes, but he'd made one the year before. Democrats had met in Chicago for their national convention. At the end of the first roll call Roosevelt needed just over 100 votes for the nomination, but Cermak refused to budge from his support of Al Smith. Some say Irish Catholics who dominated the Chicago machine might have revolted had Cermak deserted Smith, a Roman Catholic. Roosevelt won anyway and Cermak was not one of the names on the list of FRBC (For Roosevelt Before Chicago) that patronage chief Jim Farley would consult in the months ahead.

Cermak waited, hoping for a word with Roosevelt that might patch that wound. Roosevelt's limousine pulled in front of the bandstand, a microphone was brought to the car and Roosevelt lifted himself to the top of his seat to make a brief speech.

When he finished, Cermak moved to the side of the car, spoke briefly to Roosevelt and then started to walk back. Somebody sitting in a chair on the aisle stood up to leave, and Giuseppe Zangara scrambled onto the vacant chair, drew a five-shot revolver he'd bought in a local pawnshop for $8 and fired all five shots at Roosevelt.

Several bystanders claimed they deflected Zangara's aim, but the miss was more likely due to an unsteady chair and poor marksmanship. None of the shots struck Roosevelt; one hit a Miami woman, another grazed a vacationing New York cop, a Newark woman was hit in the hand, a Florida man received a minor head wound. The fifth bullet struck Mayor Cermak in the right armpit and entered his right lung.

Zangara was overpowered and taken to jail. Cermak was put in Roosevelt's car and rushed 20 blocks to a hospital. Doctors decided not to operate to remove the bullet; they were cautiously optimistic but they had a natural fear of complications and, with a 60-year-old patient, fear of his heart.

On February 23, 1933, Cermak was greatly improved; the next day he sank and his condition became critical. Almost every day there was a crisis.

On March 4 Roosevelt — the man Zangara had hoped to kill — was sworn into office as President of the United States. On the same day Illinois Gov. Henry Horner closed all banks through Tuesday, and by then banking was suspended in 37 states trying to end the panic which was threatening the nation's supply of money.

The same issue of the *Chicago Daily News* that bannered the inaugural also had a page one story that Mayor Cermak had lapsed into unconsciousness. At midnight Sunday he went into a coma. At 5:57 Monday morning, Chicago time, Cermak died.

For years a story persisted that Zangara hadn't really sought to kill Roosevelt but had been hired by gangsters to kill Cermak — not because Cermak was a crime fighter but that he had opened up Chicago to the wrong gang. There was enough hanky panky by Cermak and his top aides to give credence, but most investigators discount the theory. There was no evidence to tie Zangara to Chicago; few experts in gangland operations believed they would hire an amateur for a big "hit" job.

What got almost no attention then, or since, was the fate of Zangara. There was no question of his guilt, but his conduct raised serious questions (by modern standards) of his sanity. There were examinations, several well placed local attorneys were assigned his defense, but in incredibly swift justice, Zangara was tried, found guilty and on March 20, a little more than a month after the shooting, Zangara was put to death by electrocution in the jail at Raiford, Fla.

Chicago gave Cermak a hero's funeral. An enterprising reporter filed a story the night of the shooting in which he quoted Cermak as telling Roosevelt, "I'm glad it was me instead of you." It was probably never said; evidence suggests Cermak was unconscious enroute to the hospital. But it was too good a story to dispute at the time, and nobody did. It became part of the political folklore of Chicago.

The City Council took time to pay respects to Cermak by renaming 22nd Street in his honor. But, as with the death of Mayor Daley, there were practical concerns to be taken care of too: the election of somebody to be county chairman and mayor of Chicago. In the world of hard practical politics ritual is for the dead; today and the future are for the living, and boss of Chicago is the biggest prize of a lifetime.□

By JOHN REHFUSS

Survival for city managers: Be an expert but don't raise political hackles

Reprinted from Illinois Issues, July 1976

There is no truly 'scientific' way to operate a municipality because local government reflects the ideas of democratic control as well as the canons of administrative efficiency. The good city manager is one who understands the proportions of the mix

JOHN REHFUSS
Director of the Center for Governmental Studies at Northern Illinois University, he is author of the book, *Public Administration as Political Process.* Rehfuss was previously assistant city manager of Palm Springs, Calif.

THERE is an old saying that no city manager was ever fired for lack of competence. This means that the reason is always political in nature. This statement is true only in the most superficial way. Dismissals are for a variety of reasons and only a few are purely political. Council dissatisfaction with managers almost always involves technical expertise in some ways, because technical expertise must include a modicum of political judgment. In most cases, conflict between a manager and council represents a breakdown of the manager's image of technical competence. The most technically competent managers are the most successful at what observers call "politics" as well as the purely professional parts of their jobs.

Caught between the standards of administrative efficiency and the pressure from local interest groups, Illinois' 96 city managers must demonstrate both technical expertise and political shrewdness to do their job well — and to keep it. The fact that, nationally, the average city manager stays only three to five years in a city indicates the demands of the job.

Spectrum of political styles

The city manager form of government is in use in Illinois cities ranging in size from Peoria's 125,000 residents to several cities under 5,000. Approximately 80 per cent of manager cities are in the greater Chicago area, and most are suburban municipalities. About one-quarter became manager cities after 1970 (*see* August 1975, pp. 231-233) with most of the others adopting the plan since 1950. The spectrum of political styles in these cities is broad, and managerial roles include "ho-hum" municipal caretakers, technically expert administrative "engineers," political infighters, and combinations of all these types. Some managers have been in the same city for over 20 years, while tenure in cities with more controversy is much shorter. Sometimes managers leave because they are forced out, but more often they move to other cities for professional advancement.

Administration and politics

The city manager is expected to operate the municipality efficiently and to exercise control over all city departments. Most managers consider themselves "professionals" in municipal management and have considerable training, often a master's degree in public management and experience in smaller cities. Although they call themselves professionals, their discipline is difficult to define exactly. There is no truly "scientific" way to operate a municipality because local government reflects the ideas of democratic control just as much as it does the canons of administrative efficiency. The city council, as the elected representatives of the people, has the last word (some managers would say the "only" word) on municipal policies, and the manager, in effect, works for the council. This means that even the most clearly defined questions of administration are often infused with purely political considerations. The good city manager is one who understands the proportions of the mix. Most managers are adept at such analyses, and the most thoughtful are fully aware that "grass roots control" by the council must take precedence over administrative efficiency when the two clash.

The job, therefore, requires varying blends of managerial skill and political savvy. The latter is most important when the manager feels he must introduce policy questions which the council wishes to sidestep. An example of such a question is an employee pay and classi-

Most managers try to be very, very sure of their ground when they are dealing with a police chief

fication plan which equalizes the varying salaries among city employees, but which the council suspects may result in some valued "old timers" on the staff getting less money compared to other employees or classes. The manager will be careful to present the plan at the moment when the council is most receptive (for example, after employee complaints about inequities). He will probably make arrangements for "old timer" longevity pay. If the council accepts such a plan, it is as much a tribute to the manager's political shrewdness as to the technical merits of the plan.

This kind of situation places a premium on the manager's political sagacity, but most managers, committed to the best personnel practice possible, do not call the tactical and strategic considerations involved "political." Rather, they explain such considerations under the heading of "technical expertise" — in other words, a sense of timing and judgment. To the manager, "technical expertise" includes more than budgeting systems, street paving practice or personnel plans. It also includes the ability to know when a proposal is ripe for presentation to the council, which kinds of programs are simply inappropriate for the city, and the capacity to gauge the limits of purely "professional" ideas.

Expectations of council

Technical issues usually have political ramifications, and the wise manager does not feel that considering them indicates any weakness in his professional judgment. The manager, however, must understand what the council or board expects of him. Some cities want a straightforward manager who presents technically correct solutions which they accept as a matter of course. Generally, these cities are dominated by business or commercial interests. Some cities also want this type of manager but feel free to reject his advice in order to demonstrate who is boss. This is fine if the understanding between the council and the manager allows for such a procedure. Some councils become distressed and even hostile if the manager offers professional recommendations which are not politically palatable. The expectation is that the manager will use some political calculus to solve a community's technical problems.

Not surprisingly, some councils want a manager who is all of the above. In such cases, the manager's job is extraordinarily difficult. Those managers who have managed to survive — and thrive — in such situations have generally formulated some unwritten rules for different aspects of the job. What follows is my summary of these rules of thumb.

Involvement with policy questions

The law and a substantial amount of public opinion hold that managers merely execute the law. Although this is an oversimplification, managers believe that presenting such an image is good professional practice; it is also politically prudent. If the manager assumes a role in policy leadership, whether or not he means to, he is responsible for the failure or success of the program. The general public need not be aware of this posture; certain influential groups may associate him with the policy. Sometimes a new council, victorious over the incumbents, may associate the manager with the policies of previous councilmen.

This may have been the case in Palatine, where City Manager Bert Braun became vulnerable for several reasons. In 1973, the newly elected Republican party ousted the Village Independent party. They also associated Manager Braun with the previous Village Board majority. At the same time, Manager Braun publicly defended Palatine Police Chief Robert Centner, who had resigned under pressure from the Republican majority. Braun was perceived by the new council as partial to a defeated council majority and an unpopular police chief. Shortly thereafter, he too resigned and became manager of Woodridge.

The same situation occurred in DeKalb some four years earlier when a four-member "economy bloc" gained a majority on the council. The majority fought with the pro-spending minority, and City Manager Ralph Precious was drawn into the struggle over budget priorities, salary increases for department heads and a new airport. Public statements were made by members of the four-member majority attacking city spending and asking for the manager's resignation. Precious turned in his resignation, and the "economy bloc," by a 4 to 3 vote, accepted it. The DeKalb struggle is notable because it did represent an ideological struggle which the manager could not avoid.

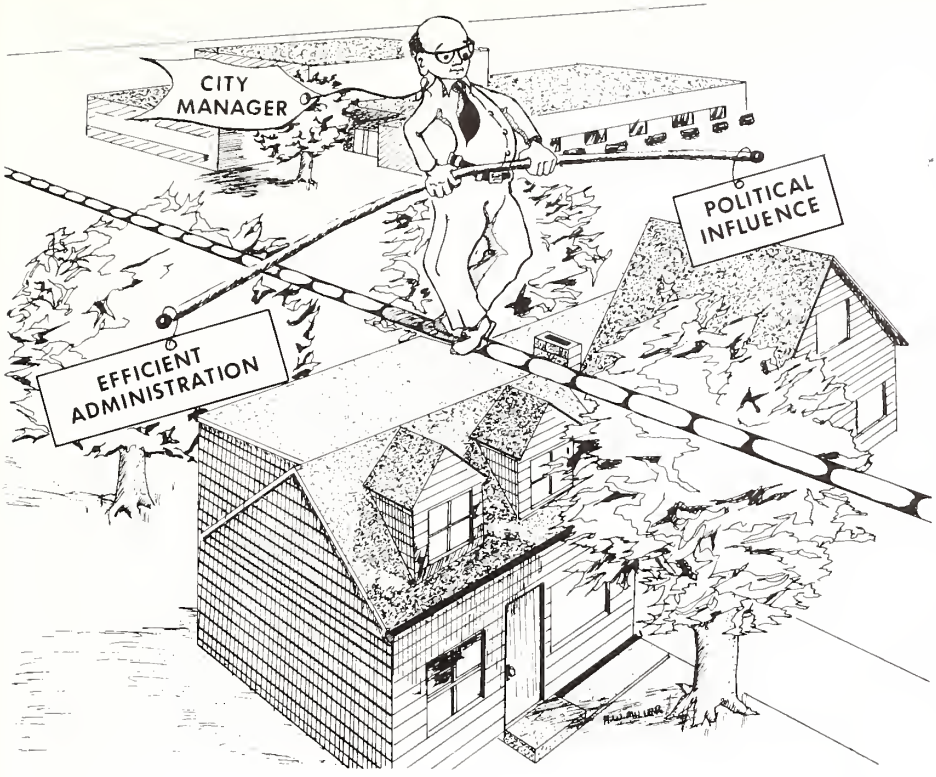
These cases are unusual; normally managers try not to make public statements which are at odds with a dominant council view. They also try to avoid being associated with one or another bloc. Most prefer a closed session for frank exchanges on personnel matters rather than an open conflict. (Closed sessions can be legally held on personnel and property acquisition matters under Illinois law.) At times, of course, managers do become associated with a minority bloc and cannot convince the dominant majority of their neutrality.

Dealing carefully with department heads

Managers in Illinois are responsible for appointing and dismissing department heads, many of whom have spent many more years in the community than the manager. Disciplining or firing such an individual, who may have many friends in the community, may displease councilmen. Conversely, it can be dangerous to defend such department heads when the council is displeased with them. Professional managers try to approach these questions from the view of what seems best for the municipal organization and the city as a whole. Usually, the council is apprised in a personnel session of recommended actions involving a department head before any action is taken. This is both a courtesy to councilmen, who have a right to "hear about it first," and an opportunity for the manager to obtain feedback from the councilmen before there is a vote in open session.

Problem of police chief

Of all department heads, the police chief normally poses most problems for a city manager. First, managers often have less expertise in police matters than in any other municipal function. Compounding this lack of expertise is the



fact that police matters are often confidential, with the manager often one of the last to know. Also, in Illinois cities, the mayor is normally the liquor commissioner, and thus is privy to more information about police or vice matters than the manager. Finally, the nature of police matters lends itself to rumor, gossip and acts which many parties may have reason to conceal. This is not a situation in which the manager's professional expertise is persuasive, particularly when the police chief is often a local person with both substantial community support and possession of information embarrassing to many people. In short, most managers try to be very, very sure of their ground when dealing with a police chief. In Elgin, City Manager Robert Brunton was forced out of office in 1972 partly because of disagreements between himself, Police Chief James Hansen and a new council majority, one member of which was an ex-policeman. The facts are unclear, but the police chief's resignation and the conduct of the police department was a major factor in Brunton's departure.

Sometimes the situation is simply impossible. In Woodridge, City Manager Kenneth Carmignani resigned (to become manager of Oak Brook) two weeks after the election of Joel Kagann as village president. Kagann had been fired by Carmignani as police chief of Woodridge just prior to the election and was then elected village president in a write-in campaign. Kagann and the new board then hired Bert Braun (formerly of Palatine) as manager. It is not clear if Braun's support of Police Chief Centner in Palatine was a factor in his appointment. It is clear, however, that managers generally treat police chiefs with extreme caution. The above examples show why.

Public relations

The manager's role in public relations is complex, with substantial variation from city to city. Relations with news media is one element of the public relations role. Most managers learn how to deal effectively with the media, although their styles vary greatly. Some maximize their contacts, feeding as much information to the media as possible. Others attempt to stay out of the spotlight, leaving comments to the mayor or councilmen. Managers feel that credit or blame for policy matters belongs to the mayor and the council, since the municipality's legislative body is free to reject or accept a city manager's recommendations. Managers accept the responsibility for the way that policy is carried out. However, this division of responsibility breaks down from time to time. One reason for this breakdown is that the manager, as the appointed expert, is vulnerable to media demands that information be revealed and explained. He has the job of explaining city policy in all its complexity and/or contradictions.

Responding to media

The manager is also available to the media and public during working hours. Often he is pressured into speaking for a mute council majority, or at least to "explain" an issue such as dismissal of a popular department head or a new personnel policy. Speaking out is risky, since he may say something which is displeasing to the council. The manager may say that any comment has to come from the council since it makes legislative policy, but the council may resent this transfer of pressure. Unhappily for the manager, he may lose council support whether he attempts to explain policy or remains silent.

Personnel actions, usually discussed in closed sessions, are the commonest type of decisions which can be defended by "no comment." Often the city manager is the victim of these kinds of adverse decisions, which the council may refuse to formally discuss, or justify with generalizations such as, "It was for the good of the city." This was the case in Elgin, when Manager Brunton's forced resignation at a closed personnel session was accepted but never explained or defended by the council majority despite heavy pressure from the local paper and many supports of the manager plan. The paper offered space for an explanation, but the council majority refused to speak, other than noting that "10 years was long enough," or Mayor William Rauschenberger's indication that city managers stay only about five years in one city.

Socializing with citizens

Relations with citizens comprise the other half of the manager's public relations job. Most managers, as community leaders, attempt to integrate themselves into the social life of the community through church membership, business clubs such as Rotary and Kiwanis, and various social groups. In this way they feel that they can be accessible to citizens and obtain a better sense of the community. Some managers, who may be equally effective, feel

City managers are a highly mobile group. Some leave involuntarily; others seek professional growth and development

that immersion in the social life of the community may inadvertently involve them in potential conflicts or make them vulnerable to charges of favoritism. The pattern of citizen contacts and group membership varies substantially from city to city. The primary determinant of group membership, in most cases, is probably the nature of the community and the expectations of the citizenry and the council rather than the individual preference of the manager.

Mobility of managers

City managers are very mobile professionally. While this mobility generally benefits municipal government, as we will see, bringing in a new manager every five years or so occasionally breeds considerable resentment at the manager system generally. Managers, it is alleged, are "carpetbaggers." They stay for a while, then leave. A local person, some complain, would stay and finish the job.

It is true that at times managers have left cities in the midst of difficulties, for apparently flimsy reasons that appear selfish. However, there are a number of good reasons for managerial mobility. A chief advantage is that some managers leave because they are asked to or can see the handwriting on the wall. This underlines the flexibility of the manager plan, a system that allows for executive changes without waiting for a term to expire. It also emphasizes the democratic control of the council, which is free to dismiss the manager at any time for any reasons it wishes.

Managers also feel that serving different types of cities contributes to their professional development. Given the nature of their job, with its risks and responsibilities, and considering the fickle nature of councils, mobility is probably no greater than should be expected. The costs of turnover are matched by the benefits of experiences in a variety of cities. With the added benefits of absolute democratic control by the council, the net result is probably a gain. At least, most managers say so.

Success stories

The examples, so far, have pointed out the difficulties managers have in surviving political conflict. To some extent it has been a one-sided picture, for most managers are able to balance political considerations with the need for high levels of technical competence. Many Illinois cities have had long and successful managerial tenures. Some, like Glencoe and Glenview, are relatively quiet suburbs where conflict is rare. But there are other communities with turbulent politics, where managers have had lengthy stays or have been able to accomplish a great deal before moving on voluntarily. Robert Brunton was manager in Elgin, a city where local politics has been very lively, for 10 years, and was succeeded by another competent manager when he left. Elgin is a case where managers have been able to perform in a highly competent manner in a highly charged political environment. A similar case is Evanston, an intensely political city that has still had a series of highly respected managers. Arlington Heights has had the same manager since the late 1950's, despite explosive growth and change. Elmhurst has had the same manager for many years.

Alternative forms

Other cities, such as Oak Lawn, have had a fairly rapid turnover of managers but have still chosen to continue this form of government. This is because, in most cases, the alternatives are not very promising. The commission form of government often mixes administrative and legislative functions. The mayor/council form often works effectively, particularly in cities such as Des Plaines, where Mayor Herbert Behrel administers the city on a full-time basis, but the city still faces the inevitable problem of electing an administrator. This simply does not work in most cases, and larger communities often turn to the manager plan and stay with it even with a turnover of managers, because it does maintain democratic controls and normally assures technical competence.□

By LAURIE JOSEPH WASSERMAN

New State Education Board's fight to assert independent role

Reprinted from Illinois Issues, May 1976

Gaining freedom from central bureaucratic controls was easy, but relationship with Bureau of Budget provoked debate among board members. Then the governor's reduction of education funding last fall crystalized the conflict. Board members, in interviews, reveal different expectations in outlook over budgeting

LAURIE JOSEPH WASSERMAN
Instructor of political science at Illinois Institute of Technology, she has a law degree from Northwestern University and is a Ph.D. candidate in political science there. The information in this article was collected in connection with Ms. Wasserman's dissertation.

A STRUGGLE to establish its independent status as a nonpartisan constitutional agency, free from outside bureaucratic controls, characterized the first year of the newly created State Board of Education. Its members formally assumed responsibility for their duties on January 13, 1975. The 1970 Constitution had mandated creation of the board (Art. X, sec. 2) to develop educational policy and administer the largest item in the state budget, aid to public schools, but left the legislature to fill in the details.

The goal of independence has been only partly realized. A bill giving the board control over its personnel policies by exempting it from the Personnel Code has become law, but a second bill exempting it from the fiscal controls of the Department of Finance has become involved in a struggle between the governor and legislature over another new constitutional agency — the State Board of Elections. This bill is in limbo because of an unresolved question involving the amendatory veto.

On the fiscal front, the board suffered two setbacks, first when it unsuccessfully opposed Gov. Dan Walker's cuts of school aid items in the budget last fall, and second when a court overruled a board proposal to speed up distribution of aid payments.

History of the agency

Creation of the board was the culmination of a movement to take the state's chief educational officer out of elective politics. Prior to the board's existence, the superintendent of public instruction, an elected constitutional officer, and the School Problems Commission, a legislative commission with public and executive branch members, shared responsibility for developing educational policy. The commission, formed in 1947 to advise the legislature, continues to exist. The state superintendent of education is now chosen by the new board.

Until 1854, the secretary of state had served *ex officio* as state superintendent of public instruction. The General Assembly made the post appointive that year. It remained appointive until the 1870 Constitution provided for the election of the superintendent of public instruction every four years by popular vote. By the late 1960's the Office of Superintendent of Public Instruction (OSPI) had developed into a bureaucracy of approximately 1,000 non-civil service employees. Allegations concerning questionable activities in this office undoubtedly contributed to the 1970 Constitutional Convention decision to replace the elective office of superintendent with a board of education. The board chooses a state superintendent who administers the Illinois Office of Education (IOE). The new Constitution states the board members are to be "selected" on a statewide basis. The General Assembly made the decision for their appointment rather than election.

On August 23, 1973, the governor signed enabling legislation to provide for a 17-member board chosen on a regional basis. The law, proposed by the School Problems Commission, provided that no more than nine members could be from one political party. Under the law, nominations are made by the governor and confirmed by the Senate. The board had an advisory role until January 1975 when the elective office of superintendent was abolished and the board assumed responsibility for governance of primary and secondary education.

A list of 50 names was submitted to the governor by an advisory committee, and on April 9, 1974, Gov. Walker made his nominations. Candidates who re-

Board's fight for freedom

flected the broadest possible cross section of age, educational background, sex, race, religion and general experience were sought. In June 1974 the Senate confirmed 14 of the 17 nominees. Shortly thereafter, one board member resigned for personal reasons. Two additional members were confirmed in June 1975, leaving two vacancies still not filled. Marcelino Miyares of Evanston was nominated by the governor on March 9, but the appointment needs Senate approval.

Freedom from regulation

The board has met on a regular basis since May 1974. Its task to establish its credibility as an independent government agency can be viewed in two parts. First, the board sought freedom from regulation by other state agencies. Second, it attempted to establish itself as a policymaking unit whose opinions would be respected and adopted by both the governor and General Assembly. It has since experienced both victory and defeat.

Unlike the Office of the Superintendent of Public Instruction, the State Board of Education, as an appointed board, fell under the jurisdiction of the Department of Finance and Department of Personnel. In addition, it had a formal working relationship with the Bureau of the Budget (BOB). Recognizing the potential constraints, the board discussed the possible ramifications of these regulations while it was still an advisory body. The first pieces of legislation proposed by the board under its mandate to make recommendations to the General Assembly were two bills designed to remove itself from the auspices of the departments of Personnel and Finance.

Senate Bill 70 (P.A. 79-230) exempts the approximately 1,000 positions under the board from the provisions of the Personnel Code and the jurisdiction of the Department of Personnel. It was recommended by the board on October 10, 1974, and the legislature and governor acted favorably on the bill early in the session. This gives the Illinois Office

State Board of Education

Chairperson: **Jack Witkowsky,** Chicago, real estate consultant

Vice chairperson: **Charles M. Long,** Waggoner, president, First National Bank of Litchfield, and grain farmer

Secretary: **Gertrude R. Monroe,** Collinsville, a director of the *Collinsville Herald*

Members

Adrienne Y. Bailey, Ph. D., Chicago, a program associate at the Chicago Community Trust

Carolyn W. Bergan, Chicago, a senior vice president of the Chicago Commons Association

Carl Busby, Ridge Farm, auctioneer, real estate broker and farmer

Edward J. Copeland, Highland Park, attorney

Mercedier C. de Freitas Goodwin, Ed. D., Chicago, deputy director of the Chicago Mayor's Office of Manpower

Samuel A. Guzzardo, Macomb, news agency owner

Robert A. Jamieson, Peoria, chairperson of the board of Security Savings and Loan Association of Peoria

Carol N. Johnston, Des Plaines, homemaker, former correspondence secretary for the Iowa House of Representatives and past secretary for Iowa State Council of the Congress of Industrial Organization

Donald F. Muirheid, Decatur, farmer

Frederick Palmer, Markham, public relations officer for Illinois Bell Telephone Company

Donald E. Truitt, Palatine, director of suburban leasing for L. J. Sheridan of Chicago

Justine Simon Walhout, Ph. D., homemaker and former chemistry professor and department chairperson at Rockford College

Members' views on long-range issues

HOW DO individual members of the State Board of Education assess the board? Fourteen of the fifteen members were reached by *Illinois Issues* for interviews and all were asked to answer identical questions:

Will the board have an annual battle of the budget with the governor, legislature or Bureau of the Budget?

Bailey: There will be a continual struggle. The board will want a bigger piece for education and the administration will have to face the problem of distributing the funds according to the needs of all agencies. **Bergan:** It's less likely that there will be a struggle if the economy improves. The governor, legislature and Bureau of the Budget are all sincerely concerned about education. **Busby:** It will be straightened out. **Copeland:** It's hard to project more than one year in advance. **Goodwin:** Annual budget requests in the past have caused disagreements with the governor and Bureau of the Budget to seek the board's commitment to full funding. **Guzzardo:** The movement of the economy to a normal state and a reduction in state aid resulting from declining enrollments may make the budget less of a problem in the future. **Johnston:** It will depend on the priorities established by the governor and legislature. **Long:** Finances will always continue to be a serious problem. **Monroe:** It will certainly depend on the state's financial condition. **Muirheid:** We have the responsibility to say what is needed, and it's up to the legislature and administration to make the determination. **Palmer:** There will always be a problem unless budgeting procedures are changed. The frills that have been added to education don't equate with the basic concepts. We need to ask what the taxpayers want and then set priorities. **Truitt:** In our declining industry, we rightfully have to defend our budget and accountability. Education has enjoyed fat years and doesn't know how to react to lean times. **Walhout:** It will vary from year to year with some creative tension existing between a board which views itself as an advocate of quality education and the people who have to balance the total budget. **Witkowsky:** The board has to press on the importance of priorities for education.

Aside from the budget, what will be the most important long-range educational problems that the board will have to solve in the next few years?

Bailey: Community recognition of the board as an educational force. Desegregation. Improved internal relations with the staff and superintendent. **Bergan:** Desegregation and declining enrollments. **Copeland:** Quality integrated education in metropolitan areas. **Goodwin:** Desegregation, district reorganization and board visibility. **Guzzardo:** Declining enrollments in that they will mean more state aid to local districts. **Johnston:** We have to work on the standard of education to have good programs, teachers and administrators. **Long:** Cooperative dealings with the local districts and raising the educational level of all students. **Monroe:** Improvement of reading, literacy, desegregation and communication with local districts so the local control of schools is not restricted. **Muirheid:** Desegregation, declining enrollments, local school control, bilingual and cultural education. **Palmer:** The board will not solve easy or major problems until it takes a strong view of its own job. **Truitt:** Full funding, simplified reporting systems for local

of Education complete independence in its hiring and firing practices.

The board also acted quickly with reference to the Department of Finance. On January 13, 1975, the board voted to recommend legislation permitting itself to approve vouchers, regulate travel, and transfer funds within line items of the administrative budget. This amounted to asking for an exemption from the regulation of the Department of Finance. Again the General Assembly acted favorably and sent the legislation to the governor on April 12. Here, however, the bill entered the world of Alice's Looking Glass.

S.B. 71 included the same exemption for both the new State Board of Elections and Board of Education. The governor used his amendatory veto, retaining the exemption for the Board of Education while disapproving it for the Board of Elections. He filed his veto with the secretary of state on June 11 but it did not reach the Senate until June 12. Instead of acting on the governor's amendatory veto, the General Assembly declared S.B. 71 was law because the governor had exceeded the 60 calendar day time limit for vetoes provided in the Constitution. Thus, the bill was filed as a law with the secretary of state but has never been enrolled with a public act number because of doubts as to its status. The governor, however, maintains that his veto was timely and that S.B. 71 is not law. The attorney general has been asked to give his legal opinion in this matter, but has not done so. What is clear is that both the General Assembly and the governor support the exemption for the Board of Education, and the board has operated as if this were the law.

Role of the budget bureau

The third administrative agency with which the board had a direct working relationship is the Bureau of the Budget. As an arm of the governor, BOB evaluates budget requests from state agencies, revises them, and then makes its recommendation. Thus, BOB is in a position to modify the board's monetary requests.

The debate by the Board of Education on the wisdom of requesting legislation to sever the tie between itself and the BOB began in the fall of 1974 and continued through April 1975. Board

---

districts, vocational education and programs for the gifted. **Walhout:** Providing a firm foundation for local districts so they won't have to depend on past funding and will be able to predict their needs more adequately. **Witkowsky:** Desegregation, implementation of total budgeting, bilingual and special education and local school control.

Do you think the board has established itself as independent?

Busby: We haven't reached the entirety yet. **Copeland:** Relatively so. **Guzzardo:** The governor has probably tried undue influence, but he has not been successful. **Johnston:** You don't reach independence in such a short period of time. There is no one magic issue. There is no way to program it. **Long:** Realistically, we will never be divorced from the political system. **Monroe:** The board faces a problem of how to stay objective in the midst of the pressures received from organized groups. **Muirheid:** There is no question that the board is independent, but whether or not that fact is recognized is debatable. **Palmer:** The board is not independent in that it is under the control of the General Assembly, and it should not be independent from politics. Education is the most political issue in the country. We have to work within the political arena. **Truitt:** We're as independent as we can be within the imposed constraints of responding to school districts, the governor, legislature and other groups.

Does party affiliation influence votes?

Bailey: The board is not beholden to a political party. **Bergan:** You couldn't tell by any vote who is a Democrat or Republican. **Busby:** At times. **Copeland:** Party affiliation has had as negligible effect as possible in a public body. **Guzzardo:** There hasn't been an isssue that has affected itself into partisan politics. **Johnston:** Sometimes I see party affiliation on one issue, but then the next vote will negate that. **Long:** There is little, if any, indication of partisan involvement. It could develop, but it's not in the present board. **Monroe:** Strong party affiliation presets a person with certain political philosophies toward a lot of things, but that doesn't mean that the decision will be made because of political motivation. **Muirheid:** Party affiliation does not affect the vote in a great percentage of cases. However, a person's professional background could be reflected. **Palmer:** The board has never had an issue that divided along party lines. **Truitt:** Hopefully, a bipartisan board can rise above that. However, there might be some people who are more sensitive to pressures from outside groups. **Walhout:** Party affiliation is not obvious. **Witkowsky:** I'm delightfully surprised by the absence of party line voting.

If members were elected, would the nature of the board change?

Bailey: An elected board would owe certain things to the constituency that elected it, and could find it hard to assume a posture of responsibility for all children. **Bergan:** An elected board would have to worry about a provincial constituency and not be able to think about problems from a purist perspective. **Busby:** If elected, the majority would be from larger cities. **Copeland:** An elected board would encourage members to play up to the media and public. **Guzzardo:** It would be difficult to get ordinary people on an elected board. An appointed board is probably more practical, but it is another step away from the idea of true democracy. **Johnston:** The board wouldn't be any different. Now we are responsive to the memberships of the districts we come from. **Long:** Elections would mean a greater danger of getting into a partisan political situation, and the loss of dedicated people who don't want to run in a statewide election. **Monroe:** We would lose people who didn't have the funds or desire to get involved in the electoral process. **Palmer:** On the plus side, an elective system would make the members more responsive to the citizenry. On a negative note, party affiliation might cause a member to become onerous to other groups. **Truitt:** An elected board is a poor idea. An appointed board might work better if it had seven to nine members. **Walhout:** I doubt that there would be the present degree of representation on an elected board. **Witkowsky:** An elected board would be stronger in lobbying areas because of its political base, but the possibility for a situation where politics replaces quality is too dangerous.

What type of expertise do you bring to the board?

Bailey: Educational expertise, an organizational perspective and a minority viewpoint. **Bergan:** Knowledge about policy-making boards and leadership in civic groups. **Busby:** Twelve years of local board experience. **Copeland:** Legal knowledge and experience as a former legislator who served on the House Education Committee. **Goodwin:** A 29-year educational career including positions as a former teacher, principal and director of special education. **Guzzardo:** Teaching experience. **Johnston:** A pragmatic way of looking at problems and parental experience. **Long:** Thirteen years of service on boards of education. **Monroe:** A "conglomeration" as a former teacher and local school board member, parent and residences in both urban and rural communities. **Muirheid:** Local government experience. **Palmer:** A layman's perspective. **Truitt:** Business and educational experience. **Walhout:** Experience from being a parent, teacher and participant in civic groups. **Witkowsky:** Experience as a former member of the Chicago Board of Education and knowledge in population changes, statistics and business.

*Robert Jamieson was on vacation during the board interviews and could not be reached for his views.□

'Virtually every policy the board wants to implement must be approved by the General Assembly and the governor'

members were closely divided on this issue. Several members felt that it was essential for the board to have a close working relationship with the governor. Furthermore, they argued, a request for an exemption from BOB's authority might jeopardize the Personnel and Finance exemption bills which had already been introduced in the General Assembly. Finally, opponents of the measure pointed out that the Board of Education had enjoyed a close working relationship with BOB, and did not see the agency as a potential threat to its operations.

Advocates of the BOB exemption argued that the Board of Education, as a constitutionally established entity, should be responsible for recommending a state education budget to the legislature without prior approval from any other governmental body. Furthermore, they stated that the budget serves as a statement of the board's priorities and, as such, should not be dependent upon the approval of another state agency.

Finally, after much debate, board members voted 6-5 not to ask the General Assembly for the BOB exemption. Thus, the board decided to live under restrictions which might constrain its budget recommendations.

Although the decision was made to live with dependence on the BOB, the vote itself was noteworthy. The vote was not along party lines; rather, it represented a political decision by the board in which partisan affiliation of individual members was not controlling.

Although the board devoted much time and attention to considerations of its relationships with the departments of Finance and Personnel and the BOB, members spent relatively less time discussing the potential ramifications of relationships with the General Assembly and the governor. These relationships came to a head in May 1975 when the governor announced a six per cent, across-the-board cut in the budget for general revenue funds. Recognizing that such cuts in education would create severe hardships in local school districts, as well as in the Illinois Office of Education, the board struggled to recommend a position to the General Assembly that would take into account both the educational and the fiscal needs of the state. After much discussion, however, the board concluded that its original budget proposal did not have any frills which could be cut.

The educational budget

The General Assembly, caught off guard by the governor's announcement, was unable and unwilling to recommend budget reductions before the close of its legislative session. Rather, it accepted the budget proposed by the board almost in its entirety. Programs which were previously mandated received virtually no reductions. Those which were not mandatory received only partial cuts. The general school aid formula was increased to an amount which exceeded the board's request. Thus, the General Assembly, in showing substantial support for the board's budgetary proposal, left the task of balancing the budget to the governor.

The governor, acting pursuant to his May announcement, pared $116 million from the education budget by using amendatory vetoes. The board went on record strongly opposing these cuts. Educational interest groups also opposed the cuts, and for several months the board meetings served as a forum for a coalition of these groups which was attempting to win sufficient support in the legislature to override the vetoes.

Amid media publicity and a direct confrontation between Gov. Walker and Chicago Mayor Richard J. Daley, the General Assembly met in the fall of 1975 to attempt an override. Although the vetoes were overridden in the House, they failed in the Senate by slim margins.

The battle over school funding did not end here, however. The board placed itself in direct confrontation with the governor with a November 25 announcement that it would authorize monthly state aid payments to local school districts at a rate of one-twelfth of the distributive aid formula entitlement, regardless of the appropriation. The deficiency caused by the governor's veto would be made up by pro-rating the twelfth payment. A supplemental appropriation was clearly hoped for.

The governor countered the board's move by filing a suit against its chairman, Jack Witkowsky, claiming that he, as the official with signatory authority for school aid vouchers, would be violating the law by authorizing these payments. Faced with a possibly unfavorable court decision against him and acting on the advice of his attorney, Witkowsky did not authorize the payments. Later, the entire board and the state superintendent of education, Dr. Joseph M. Cronin, were joined as defendents in the suit.

On February 10, 1976, Sangamon County Circuit Court Judge J. Waldo Ackerman ruled in favor of Walker and ordered that this year's payments be made according to the amount of funds appropriated rather than by the entitlement under the full funding formula (*Walker* v. *Witkowsky*, No. 714-75). Two days later, the board voted to appeal Judge Ackerman's decision. In the meantime, the board is continuing payments on the basis of one-twelfth of the appropriation. Support for the board's position may be coming from another source, however. As of this writing, H.B. 3197, which would codify the board's position into law, has been passed by the House and is on third reading in the Senate.

Strides toward independence

The board has taken great strides towards independence from other governmental agencies and from partisan politics since its inception. Equally important, the board has proven that it can function to recommend educational policies without regard to the partisan affiliations of its members.

However, it was inevitable that the board could not achieve total independence. Virtually every policy the board might want to implement must be approved by the General Assembly and the governor. While the board's legislative program, other than monetary issues, was highly successful, the board must live with the reality that no major policy changes can be achieved without the concurrence of the legislative and executive branches of government. As a new constitutional entity, the board may also expect court challenges.□

By GARY ADKINS

Reprinted from Illinois Issues, May 1976

Joseph M. Cronin

THE PROBLEMS of budget, desegregation and meeting the educational needs of one of the largest and most diverse student populations in the nation are faced by the Illinois superintendent of education. The man who must face these problems is Joseph M. Cronin, the state's first appointed superintendent.

The following interview with Dr. Cronin took place in his Springfield office in February.

Adkins: Superintendent Cronin, after a year in office, how would you assess your accomplishments?

Cronin: My first task was to help the new State Board of Education assess its goals and directions. They had not come to agreement on that before they hired me. My feeling was, it would be an opportunity for me to help in that process. I asked for 90 days to visit schools throughout the state, and to get some idea of the status of education in Illinois. The experience was certainly very rewarding for me.

It was possible then to sit down with the state board and say 'OK, what's most important?,' and to talk about 25 or 30 areas that I thought needed improvement, and find that the state board could agree on 20 of those. So, working with the board and setting an agenda was the most gratifying for me. That's number one.

There are some other things. East St. Louis was in terrible disarray. Four board members were under indictment, a majority of the school board was in jail. I asked the state board if I could try to find a staff to help run the school system there, and the board agreed. Then we sent 80 staff members last August to help. As a result we've regained some of the public's confidence, and the quality of education has improved. We've lowered class size and used resources better. The whole feeling there is that we have turned the corner.

Adkins: You are the first occupant of the appointive office of superintendent. How do you define your duties, and how do they differ from those of the now defunct elective office?

Cronin: Well, I don't think I can make policy judgments by myself. I must take to the State Board of Education things like the size of the budgetary request, the nature of the legislative package, whether or not we join a court case in any capacity — those big decisions.

Let's take affirmative action. The board wanted to have me engage its affirmative action policy. They wanted to make sure that desegregation, or integration, was the most important thing we did. Earlier those decisions would have been made by one man sitting alone or with his staff. Now a board makes these critical judgments.

State aid to schools

Adkins: Is the state aid formula fair and equitable to students and taxpayers across the state?

Cronin: I think it is very helpful to low-income cities. Places like Chicago and East St. Louis get the most from it. The medium size cities like Springfield or Rockford have not benefited. In fact, they've been losing out, mainly because unit districts don't get the advantages they had previously. Some elementary districts and high school districts are closing, except those on the roll-back.

[The roll-back allows districts which have in the past been assessing property valued at a high equalization rate to decrease their assessment level. Since the wealth of a district is measured in terms of local assessed valuation for purposes of the state school aid formula equalizer, it was felt some districts were being unfairly penalized for complying with state law by assessing property value at 50 per cent of true market value. (Most districts had been assessing at a much lower rate.)]

The roll-back has turned out to be a terrible burden on the high-income suburbs, who've been exceedingly rich for many years, but now, to cope with inflation, have instituted tax cuts. Places like New Trier are on the ropes financially. This was never intended when they were asked to slow down their rate of improvements so that the poorer districts could catch up. But it's had a negative effect because it has slowed down the rate of improvement at a faster pace than was really intended by the Republican legislators who wanted the roll-back as a tax break for the beleaguered rich districts.

Adkins: What changes would you favor in our system of educational finance in this state?

Cronin: Some of the 'givens' or stipulations come right from the State Board of Education. They think that having 31 categorical aid programs is too many; that we should consolidate the special education programs, and health education programs; and try to link those closely to the resource equalizer formula. That's one very important policy criticism made by the board staff.

Secondly, we should look at whether a property tax is the right way of calculating just exactly how much a school district's portion of state aid should be. Many people argue that it's a very unfair system.

Thirdly, we've got a task force report on declining enrollment that says we should not pay by the pupil. We lose

GARY ADKINS
A graduate of the Public Affairs Reporting Program at Sangamon State University, where he interned for six months with *Illinois Issues* and the *Alton Telegraph*, he is presently a free-lance writer.

After one year in office as the first appointed school superintendent in Illinois, Cronin has 'accomplished a lot — but still has a big hill to climb'

money in paying this way. Anyway, we have formed a study commission to look into overhauling the formula.

Adkins: Last May the Board of Education, to which you are responsible, released a status report on desegregation in Illinois Public Schools. The report showed that nine school districts had experienced increased segregation since adoption of desegregation guidelines by the former Office of the Superintendent in 1971. What course of action would you recommend to correct this situation?

Cronin: We're revising the rules to provide for a process to bring those school districts into compliance with both federal and state laws. Mainly, we'll require those districts to come in with a plan that makes sense to the local communities.

Adkins: Should the State Office of Education penalize those districts by withholding state or federal aid?

Cronin: As a last resort. I would favor a court case in most situations prior to the actual shutting off of aid — that's a nuclear weapon, everybody agrees on that. But first I would favor a probationary status, with a warning of possible loss of state and federal aid. It just would be hard for some school districts to make the necessary changes fast enough.

Adkins: Busing is certainly an emotional issue in Boston, an area where you have spent considerable time. Generally speaking, what do you think is at the bottom of this emotional response?

Cronin: Well, I think it's a very emotional issue around the country, not just in Boston — San Francisco, Louisville, it's pretty widespread. We bus 750,000 students a day in Illinois, many across town, this way and that, but for some reason it's only busing to overcome racial segregation that upsets people. And that's unfortunate.

Desegregation

Adkins: Is it wise or feasible to attempt to integrate or desegregate schools along a percentage or quota basis? I'm referring in particular to the present state law which requires that each school be within 15 per cent of the district-wide racial makeup.

Cronin: That really isn't a quota, it's more of an objective indicating whether or not schools have reflected segregation — which of course in many cases they have.

Adkins: Are there equal educational opportunities for minorities in Illinois?

Cronin: I don't think so. I think on the whole the minorities are schooled in old buildings, the teachers are less experienced, the dollars spent per pupil are less. Different state and federal programs have helped to turn that around, so that we're beginning to see some changes at least in the quality of resources that are being distributed.

Adkins: Last year you recommended that the legislature pass a bill enabling the state board to submit its budget for school spending directly to the legislature, bypassing the governor and the state Bureau of the Budget. Why did you feel that the governor and the BOB should be excluded from the school budgeting process?

Cronin: I don't think that they should be excluded. And we didn't submit a bill to make us independent of the governor. We had two bills: one making us independent of the Department of Personnel, and the second making us independent of the Department of Finance. Otherwise a governor — not this one, but some future governor — could slow down the payment to schools, which local school districts would then have to suffer. We considered a bill making us independent of the Bureau of the Budget, but a majority of the board felt that would be unwise.

We actually have access. We can file a bill directly with the legislature. But any governor could veto or reduce an appropriation. Yet the governor himself has said we need a measure of independence.

Adkins: In retrospect, how do you feel about Gov. Walker's school aid vetoes last year — the $81 million general aid veto and the $35 million cut in special education programs?

Cronin: I felt that if all agencies were going to have to take cuts, so should this agency. The general aid to schools was cut by five per cent. What I'm concerned about is the cut in special education, because that was 20 per cent, which was a veto cut not asked of most areas of government. One program, the special education construction fund, was cut 100 per cent. The bilingual education program will also be cut, which is most unfortunate.

Adkins: What effects do you see these vetoes having on educational quality in the state, and were they justified in light of the state's financial condition?

Cronin: Class sizes will be raised in many local districts, extra-curricular programs will be dropped, teachers will be let go.

I do think the state's treasury was low. Others have said maybe state spending should have been curtailed in some other areas. What's more important: spending for roads or investing in our children? Of course, I have a special concern about the schools, but I thought we had to take a very heavy share of the overall cuts.

Adkins: After the legislature failed to override the vetoes by the governor, the State Board of Education, at your recommendation, accelerated the payment of state aid funds to schools. Was this action fiscally responsible, or was it dangerous deficit spending as the governor charged?

Cronin: Well, the Republican sena-

Demerits for 9 school districts?

Nine Illinois school districts were cited by the State Board of Education in early March for failing to comply with desegregation rules: Argo Summit 104, Cahokia 187, Chicago 299, Chicago Heights 170, Hazelcrest 152½, Madison 12, Rockford 205, Springfield 186 and Waukegan 60.

The rules require that each school in a district reflect within plus or minus 15 per cent the racial composition of the district as a whole. In a district with 20 per cent minority enrollment, each school should have 5 to 35 per cent minority enrollment, for example. Faculty must also reflect racial composition.

Illinois has 1,029 school districts and 84 have minority populations of sufficient size to call for desegregation plans. Forty-four have plans in effect, six have plans to be implemented next fall, 23 have submitted plans which are being reviewed, and one was given a 90-day extension; finally, there are the 10 named above.

'I think with inflation, as well as declining enrollment, we are going to be hard-pressed to maintain a high level of education'

tors who are champions of fiscal responsibility felt that it was my duty to pay out according to the formula, and not to make cuts. As I understand the law we have no authority to pay out less. Of course, the governor has taken us to court to decide who's right. [Sangamon County Circuit Judge J. Waldo Ackerman decided February 10 that the governor was right, that the state board could not make school aid payments for more than the amount that was appropriated.]

Supplemental appropriations

Adkins: The state board in Chicago on January 21 proposed a $100 million supplemental appropriation to be introduced in the spring session of the legislature. This amount was said to represent funds actually owed to local school districts by the state for this fiscal year. The total is $40 million less than the amount vetoed by Governor Walker, but is said to represent "full funding." Where were cuts made?

Cronin: Yes, of that amount $20 million were for programs the legislature added on, and the other $20 million were funds in vocational education, gifted and bilingual programs, which the law did not say we had to spend.

Adkins: The state aid budget is expected to reach $1.89 billion for fiscal 1977, with significant increases proposed for special education, bilingual programs and vocational schools. Do these boosts represent major increases in services?

Cronin: Yes. They represent two things. One, that's the price tag on existing formulas and statutes. Secondly, the state helps to pay a portion of the salaries of 15,000 professionals in the area of special education, vocational and bilingual schools, and this number of professionals was to have been cut by several thousand to balance the budget. What we've done is to restore that cut and also provide for the expansion of services by letting these professionals serve more students.

Adkins: Do you feel that enough is being done to educate bilingual students in this state?

Cronin: No, we've got 100,000 children of French, Spanish, Italian, Greek, Vietnamese and other nationalities, and we're certainly not doing enough to adequately educate them.

Adkins: Are there enough qualified teachers?

Cronin: We have been recruiting in places like Puerto Rico, Mexico and elsewhere, while taking some of our native teachers with language backgrounds and getting ready to certify them.

Adkins: What do you see as the largest problem facing Illinois schools in the next decade?

Cronin: Money. I think with inflation, as well as declining enrollment, we are going to be hard-pressed to maintain a high level of education.

Adkins: How would you assess the overall quality of education in our schools as compared with other states?

Cronin: Very highly; I would say our best is as good as anywhere in the country, but we are not uniform. Some of our best districts, like Arlington Heights, are outstanding, and some of our poorer areas, like Cairo, are coming up fast with the help of additional funds.

I'm concerned about some of the very poor rural schools. There are dozens of dilapidated buildings that are unsafe, with sagging floors and lockers that don't lock — that's terrible. It's very discouraging to see a low quality facility, and in some cases, teachers who just aren't either well-trained or inspired.

Adkins: Is there any area we have yet to touch on that you would like to discuss?

Cronin: One of my hopes for next year is to take a look at the curriculum. Along with the 'three R's' in education of basic skills, there is also a fourth R — responsibility. I want to put law education in the schools, along with the further teaching of economics, to have both business and labor studied — so that students understand the very complex world we live in, and so they can take an informed role in their community responsibilities.□

JOSEPH M. CRONIN came to government service from a professorship at Harvard, where he had earned his bachelor's and master's degrees prior to receiving a doctorate at Stanford University in 1965.

Cronin was the first secretary of educational affairs in Massachusetts, a post he held for three years. In Massachusetts he gained a reputation as an effective mediator by chairing a committee to resolve disputes arising from the opening of a new community college in a black neighborhood of Boston. A year later he was instrumental in coordinating various state agencies to enact provisions of a complex special education law. Another of his major accomplishments as secretary was his reorganization proposal for placing 31 college campuses and a department of elementary and secondary education under two education boards.

He was subsequently chosen by the new Illinois Board of Education as our state's first superintendent of education. The board now has all the powers of the former elected superintendent of public instruction, and Cronin as appointed superintendent is the administrative officer for the board. Since taking office in January of 1975, Cronin has asked for tighter laws to control correspondence and trade schools and to eliminate sex discrimination in state schools.

By LILBURN H. HORTON, JR.

NO

Reprinted from Illinois Issues, February 1977

Should they have full votin

Student

WHAT ARE the responsibilities of representatives on higher education governing boards? These responsibilities, and who has the qualifications to meet them, should be the most significant factor in considering the appropriateness of student participation on college governing boards. I don't believe there should be specific positions designated for student representatives on these boards. My argument is based on philosophical grounds, legal opinions, and is presented primarily from a public community college viewpoint.

If a person is elected to a board position as a representative of a particular group, he or she must act as the voice of that group and act in that group's best interest. This is the way the students perceive their board membership. Indeed, in one college district the student senate impeached their nonvoting student member on the college board, removing him from the student senate, and sought the help of the administration and trustees in their objective of impeaching and removing him from his position on the college board. The basis for their action was the individual's alleged failure to comply with requirements spelled out by the students. If a person is elected to a board position as an individual whose own talents are considered desirable for the position, he or she is chosen to act as part of that board and act in the board's best interest. "The board's best interest" might be defined as an overall concern for providing the best and most community college services to all district citizens within the framework of recognized and demonstrated need or desirability plus the ability to fund. A representative's first responsibility is to the board itself. By its very nature, a student representative to a governing board has loyalties seated in the student body rather than the college as a whole. Ideally, there should be no conflict between these positions, but, in reality, such conflicts exist. Students are the lifeblood of the educational process, but their specific interests may be too short term for the long-range decisions made by governing boards. A tuition hike may be inadvisable from the student's viewpoint, but it may be best from the school's standpoint.

Members of community college governing boards are, of course, responsible to a constituency. They are elected to their positions. If they make bad decisions, they are answerable to their electorate. But their electorate judges them on the basis of their product — the operation of the college. A student representative, on the other hand, is judged for his or her ability to represent the interest of the students. In other words, a student representative on the governing board is answerable to a specific interest group. If we begin to represent specific interest groups on our college governing boards, we must philosophically accept the need for equal representation. Are we to have representatives of the faculty, administration or staff? A bill was introduced in the California state legislature to require governing boards to include such representatives. The Illinois Community College Trustees Association states, "If representation on boards were realized for all legitimately interested groups in the community college district, the lay board governance concept for higher education that has worked so well for the past 400 years could be reduced to shambles."

The first student trustee of one public university said, ". . . for the student trustee to be effective, he must integrate with the rest of the board members and establish himself as a team member . . . . to appear strictly as a lobbyist for the students would be a mistake." Yet, the whole purpose of the law was to make sure the student viewpoint was heard. Not having a student representative in no way abridges the individual rights of students to run for election to the board. Indeed, to specify that only a student can run for this particular position on the board is discrimination against nonstudents.

But the philosophical problem of whether a student member's loyalty is to the board or to the student body is not the only one raised. There are legal aspects which must be considered. The Carnegie Commission on Higher Education issued a report, "Governance of Higher Education: Six Priority Problems," in which they concluded that students should not serve on boards of trustees, in faculty senates, or have voting rights in departments. Illinois, however, enacted Public Act 78-822, which was signed into law by Gov. Dan Walker on September 12, 1973. The law provides for nonvoting student representatives on the governing boards of public community colleges, colleges and universities in the state. The law specifically states that student representatives do not have voting rights and that they cannot be counted to establish a quorum. Beyond these limitations, however, the law is very vague.

The law does not address itself to the question of how student representatives are to be elected, whether they have advisory votes, whether they are allowed to make or second motions and whether or not they can attend executive sessions. There are differences of opinion concerning the legal and practical

Continued on page 78.

LILBURN H. HORTON, JR.
Recently appointed president of Kankakee Community College, Kankakee, Dr. Horton was executive director of the Illinois Community College Trustees Association since 1971.

ghts on university boards?

trustees

By MARY McDONOUGH BRADY

YES

Reprinted from Illinois Issues, February 1977

"STUDENT POWER" was a familiar slogan of the 1960's. During that stormy decade students did indeed emerge as powerful participants in institutional decisionmaking. In the early 1960's, radical student activists opened their campuses to controversial political speakers and made important contributions to the civil rights movement.

Alienated students dropped out in protest against society's many ills, which were generally blamed on the existing "establishment." They developed a counterculture, complete with their own cooperative homes and businesses, underground publications and alternative educational offerings.

Both the activists and the alienated succeeded in frightening the establishment. Campus riots drove university presidents from their ivory towers and politicians from their seats of power. The new morality of the young dropouts led graying Americans to wonder what they had done wrong, and to explore ways of bringing their prodigal sons and daughters back into the fold. The establishment began responding to student demands.

Campus administrators sought input in areas of decisionmaking that had been off limits to students in the past. Eighteen-year-olds were given the right to vote. When American involvement in Vietnam ended, the campuses became strangely quiet. Time erased the divisions between the counterculture and the establishment. By the early 1970's, students had been successfully integrated into the mainstream.

At Illinois campuses, student leaders now administer miniature bureaucracies containing specialized departments run by relatively large staffs. They allocate millions of dollars in student fee money and they appoint members to virtually every campus committee of significance. They conduct aggressive voter registration drives among their constituents before major elections, and then campaign to get the students out to vote. They monitor legislative activity relating to higher education issues and use their resources to promote legislation favorable to student views. In short, students of the 1970's are continuing what students of the 1960's began — they're developing student power.

Four years ago, Illinois students joined in an intensive effort to win student seats on the governing boards that control public colleges and universities. They succeeded largely through the efforts of the Association of Illinois Student Governments (AISG), a fledgling statewide organization. On September 12, 1973, Gov. Dan Walker signed a law providing for student members on each of Illinois' 62 community college and university boards of trustees, the statewide Illinois Community College Board and the Illinois Board of Higher Education. The student members have all the responsibilities and powers of the other members, except the right to vote and to be counted for quorum purposes.

Now some administrators are getting worried again. They might be saying, "We wanted to involve students in the process, not let them take it over. Perhaps we were a bit too hasty."

Can students be stopped? Should they be stopped? The issue at the governance level is no longer whether or not students should be seated on the boards. Like it or not, the administrators are stuck with the law. Now student trustees are moving to grasp the full power of their positions — the right to vote.

The creation of student trustee positions has led to clear-cut benefits for the boards and the institutions, as well as for the students. Prior to enactment of the student trustees law, membership on Illinois' governing boards was limited to laypersons elected by district voters or appointed by the governor. Most of them had no special knowledge of the institutions they were designated to govern. Once a month they met and deliberated, relying heavily on staff recommendations and instinct to make their decisions. Student trustees bring a wealth of information along with their special perspectives. They are able to inform their boards about day-to-day concerns at their schools. They know how their institutions function at every important level, procedurally and informally. In a sense, each student trustee opens a doorway to his or her campus through which the far-removed laypersons can obtain a perspective.

Institutions benefit by having students on their governing boards too. The student trustees are the only board members who are not only able, but also expected to act as advocates for their campuses. Many governance issues do not have direct implications for students, but do have direct implications for individual institutions. The student trustees are articulate spokespersons for their own schools.

Students are often less than equals because they are not, as individuals, permanent members of the college or university community. Some faculty and administrators feel that student views are unimportant — that since they'll be gone in a few years they have no real stake in the institution's future. Students are justifiably resentful of this treatment. They consider themselves as not only the consumers of learning, but also as the end products of the educa-

Continued on page 78.

MARY McDONOUGH BRADY
Former executive director of the Association of Illinois Student Governments, Ms. Brady holds a master's degree in social science from the University of Illinois at Urbana.

NO

University and college board members should represent the school — not a particular interest group

application of this law.

At present all community college districts have student representatives. Most community college boards are allowing student representatives all rights except those specifically denied by the law. At the University of Illinois, student trustees are included in executive sessions and are allowed to make motions. The Board of Regents, the Board of Governors, Southern Illinois University, and the Illinois Board of Higher Education have similar positions. The Illinois Community College Board, however, requested its student representative not to make or second motions until the state attorney general released an opinion concerning the rights of student representatives.

On January 8, 1974, Atty. Gen. William J. Scott issued his opinion. He stated that in his opinion student members have the right to attend executive sessions and that they may make and second motions. He was not requested to give an opinion concerning the right of student representatives to have advisory votes. Legal opinions on these issues are, however, divided. The law offices of Chapman and Cutler stated, "It is our opinion that the nonvoting student member would not have the right to make a motion or second a motion." The Chapman and Cutler firm handles approximately 90 per cent of the school bonds sold in Illinois. Chapman and Cutler will not allow a college to sell bonds if the motion to do so was made or seconded by the student representative.

The law firm further states that they can make no opinion concerning the student representative attending executive sessions because "the Act is too ambiguous to permit that." William E. Feurer, attorney for the Illinois Board of Higher Education, advised that "there is no statutory limitation which prevents a nonvoting student member from making motions." He concludes that the board itself can determine what course of action to follow. Attorney Frank M. Hines writes, "It is my opinion that the only limitations which can

YES

Student trustees should have full recognition and all rights on the boards on which they serve

tional plants. Apart from this conception of their role, many students are well aware that they and their counterparts contribute much talent and creative energy to their institutions.

Perhaps the greatest benefit of having students on governing boards — to students, institutions and the boards — lies in the improvement of communications between "the ruled and the ruling." Allowing student participation in the decisionmaking that affects their lives results in less misunderstanding, fewer conflicts and an overall reduction in alienation.

If students bring such a positive contribution to governing boards, why the controversy? Contrary to an opinion from Illinois' attorney general, some boards deny student trustees the rights to attend executive sessions and to make and second motions. A few boards have denied student trustees all the materials submitted to "regular" board members, and one board even (temporarily) refused to permit the student trustee to sit at its table! Some boards strenuously object to sharing their governing power with students because they believe students will not assume the responsibility associated with board membership; that they are not sufficiently competent to wisely execute board duties; or that they simply don't have a substantial interest in the full range of matters brought before the board. Some boards fear that the creation of a special student seat will pave the way for creation of faculty, nonacademic staff or other special seats. And, they argue, there is simply no need for providing students with an additional channel for participation on boards of trustees. Students may become appointed or elected members under the existing system.

The arguments that student board members might prove to be irresponsible, incompetent or disinterested are, of course, patronizing and otherwise without merit. Elected or appointed members could just as easily prove to be irresponsible or incompetent — and a few have been. It doesn't make any sense to maintain that students who live with their institutions on a daily basis will be less interested in its concerns than the laypersons who meet for a few hours once a month to fulfill their duties.

It doesn't follow that special seats should or will be established for faculty, nonacademic staff or others simply because student seats have been created. Students are the only nonemployees involved in their institutions' operations. The presence of representatives of

be imposed on the student member are those which are set forth statutorily or those which are necessarily implicit herefrom." Concerning the advisory vote, the law firm of Maher and Imle maintains, "It . . . is our opinion that no selected student member is entitled to a vote on any measure, motion, or resolution of a board . . . no matter how it may be labeled."

Perhaps the legal opinions on the whole law are best summed up by the opinion of the law office of Franke and Miller which states: "There is a general rule of law that where legislation is so indefinite and ambiguous that it cannot be followed with any certainty, the legislation is void as being too vague. It is our opinion that this legislation clearly falls within the thrust of that legal principle and hence is invalid."

Aside from the obvious legal problems inherent in the legislation concerning student members of governing boards, there are other consequences. In most situations the students have responded to the trust placed in them if given an orientation to the trustee's responsibilities and need for confidentiality. I have no doubt there are students who can serve well on governing boards. Such students are already free to seek office via regular channels. They do not need, nor should they have special treatment of the kind now provided in Illinois' ambiguous law. Having at the board table an individual whose board membership is limited (i.e., "nonvoting") disrupts the relationship among board members and between board and administration. Additionally, student involvement in board discussion and action could be achieved in their capacity as an advisory group. This would allow students to retain flexibility without the danger of a "frozen" situation such as developed in the district referred to earlier where a student board member was "impeached."

Members of governing boards should be working to ensure that the decisions made are the best for the school. They should not be present merely to represent a particular interest group.□

---

employee groups on boards might lead to conflicts of interest. (While some students might be incidentally employed by their schools, their interests as students, not as employees, are represented by the student trustees.)

While it is true that students could become appointed or elected to boards, few students attained trustee positions before the special seats were created. Only one student has been appointed to a board by a governor in Illinois' history; she was quickly replaced when she differed with him on a critical issue. A few students have been elected to community college boards. However, since the average trustee term is six years and community college academic terms are only two years, such student trustees do not represent the college's students for very long.

As fears of disruption by student trustees have been proved groundless, board resistance to them is weakening. Students themselves are untiring in their efforts to achieve full status. Many student trustees already have the right to cast advisory votes on their boards. While such votes do not count in the final tallies, most student trustees feel they can be more accountable to their constituencies by casting advisory votes. Some boards prohibit advisory votes on grounds that they would be illegal. They maintain that since the statute providing for student trustees specifies that they shall be nonvoting, a vote of any kind would violate the law.

Students are gaining ground on every front, but the real test of their strength will be in getting new legislation enacted to accord student trustees full voting rights. Administrators, boards of trustees and elected public officials are not going to be persuaded that students should have voting seats by virtue of brilliant arguments. Students will have to flex their muscles to get the job done.

In Illinois, there are over 500,000 public college and university students, nearly all of whom are potential voters. As one student trustee pointed out, "I am naturally not opposed to advisory voting 'privileges,' but our time could be better spent in a collective concentration of our efforts toward full recognition of student trustees on governing boards. I don't believe this is an impossible task, considering the coordinating abilities of the AISG and other statewide groups."

Students will have full voting rights on boards in the foreseeable future — not because they deserve it for behaving themselves, but because they have the power and the will to go after — and get — what's good for students.□

By ORVILLE V. BERGREN

NO

Reprinted from Illinois Issues, April 1977

Should teachers get t

The right

THE QUESTION of whether or not teachers have or should have the right to strike cannot really be addressed without extending it to all public employees. And since such strikes are concerted actions by unions or associations of employees, the question of collective bargaining with public employees must also be examined.

There is nothing in the United States or Illinois constitutions giving any citizen the right to strike. Government employees, like all citizens, have the constitutional right to associate in groups to advocate their special interests to the government. But there is no requirement, in the absence of a statute, that such employee groups be recognized as bargaining agents for collective bargaining with those groups. The common law that came to us from Great Britain prohibited strikes by citizens against the crown — against the sovereign. Illinois courts still enforce that common law, and will enjoin public employee strikes if public employers have the political courage to seek such injunctions (*City of Pana* v. *Crowe*, Illinois Supreme Court 1974, 316 N.E. 2d 513). A strike by school employees has been found to be unlawful as against the public policy of the state (*Board of Education* v. *Kankakee Federation of Teachers,* Ill. Sup. Ct. 1970, 264 N.E. 2d 18).

The argument usually advanced in support of public employees' collective bargaining and right to strike is that government employees should have the same rights as employees in the private sector. Should they? Everyone who works for a living wants to have more pay and better working conditions. Government employee associations can and should be able to engage in political action and lobby the General Assembly on behalf of their members. And they certainly are doing that. But collective bargaining for pay and working conditions is another matter.

The difference between private versus public "management" is profound, insofar as the question of collective bargaining is concerned. Collective bargaining is a system of labor-management relations developed and designed for the private sector. It contemplates bargaining between equals on economic decisions. It is disciplined by the economic ability of the employer to meet labor demands and still stay competitive.

Public sector bargaining, on the other hand, involves political decisions which affect everyone. Government is a monopoly. There are no alternative sources of supply of government services, and there is no free market competition to keep government costs in line with other sectors of the economy. Public employee collective bargaining is also inconsistent with the concept of Civil Service, enjoyed by so many public employees, and tenure for educators. Private sector employees enjoy no such job security.

In order to function properly government must be sovereign. Collective bargaining tends to be destructive of governmental sovereignty. As the power of public sector labor leaders increases, the power of citizens to exercise self-government decreases. There is no room at the bargaining table for the taxpayer while political decisions affecting his taxes are being made. The plight of New York City today is a grim reminder of what happens when governments are dominated by public employee union leaders.

Collective bargaining does *not* improve the efficiency of government nor promote peaceful employer-employee relations, as consistently urged by proponents. The Public Service Research Council, a national not-for-profit research group of Vienna, Va., recently reported that a study of the 34 states with public employee collective bargaining statutes revealed that enactment of such statutes increased employee strife and caused an increase in strikes, although all but seven of the statutes prohibit strikes. In Michigan, there were 290 public sector strikes in the first six years following enactment of its collective bargaining statute (which prohibits strikes), compared to one strike in the seven-year period before the law. In Pennsylvania, there were 141 strikes in the first three years, compared to 23 strikes in the 10-year period before the law.

It is the nature of collective bargaining and maintenance of union leadership to ask employers for more than they are willing to give. This is followed by a hardening of positions, then the strike, depriving the public of services for which there is no substitute, then capitulation by the government employer and amnesty for illegal strikes.

Compulsory arbitration is sometimes suggested as a way of avoiding public employee strikes. But compulsory arbitration does not guarantee a "no-strike" end of a dispute with a militant union. More importantly, as applied to public employee collective bargaining, it places the power of decision regarding government costs and tax increases in

Continued at the top of page 82.

ORVILLE V. BERGREN
President of the Illinois Manufacturer's Association (IMA), a group of more than 5,700 manufacturing and processing firms and plants in Illinois, he is a lawyer and former Marine Corps officer, who joined the IMA in 1965 from the A. O. Smith Corporation of Milwaukee. The IMA has been concerned about industry jobs leaving Illinois.

r do they have it?

to strike

By OSCAR A. WEIL

YES

Reprinted from Illinois Issues, April 1977

THE RIGHT of teachers to organize unions and to engage in collective bargaining is firmly based in the guarantees of individual freedom provided by the United States Constitution, as well as upon common law principles of freedom of association. There is no provision in either the U.S. Constituion or the Illinois Constitution for the suspension of the rights of individuals simply because they are public employees. If teachers cannot be denied the right to engage in union activities, then, inevitably, the Fourteenth Amendment guarantee of equal protection under law, as well as the Thirteenth Amendment guarantee against involuntary servitude, should enable them to establish collective bargaining relationships with their employers.

Denying teachers their basic rights and forcing them to teach by court order violates dramatically the principles basic to education in a free society, so much so that prohibitions against teachers' strikes are generally unworkable and unacceptable. To the teachers who care about academic freedom and their integrity as teachers, and to all those who care about intellectual freedom, there is no acceptable alternative to the right of teachers to collectively withhold their services. Those who believe teachers should be prohibited by law from striking and that disputes between teachers and public education boards over matters of educational policy should be submitted to a third party for arbitration, either do not understand or lack respect for the rights of teachers and for the integrity of the governing boards of public educational institutions.

Much progress has been made in the past 20 years in securing organizing rights for teachers. Until the late 1960's, most of the progress was made by a minority of teachers who defied the formal and informal rules against teachers' unions, and sometimes struck in violation of court injunctions. As a result, about 80 per cent of public school and community college teachers in Illinois are now represented by unions or associations in collective bargaining. University teachers are rapidly moving in the same direction. Three landmark court cases that affirmed the constitutional rights of teachers grew out of these union activities.

The most important of these court cases occurred in 1966 because of the firing of two members of the Illinois Federation of Teachers (IFT) in Dolton, located in south Cook County. The teachers alleged that they were fired because of union activities. As chief administrative officers of the IFT at that time, I directed that court suits be filed in both the state and federal courts. As had been true historically in Illinois courts, the suit in the circuit court of Cook County was unsuccessful. The suit in federal district court, the case known as *McLaughlin* (a teacher) v. *Tilendis* (the school superintendent), was also dismissed, but was appealed to the U.S. Court of Appeals for the Seventh Circuit. The district court judge ruled that joining a union was not a right protected for teachers by the U.S. Constitution. He said the act of joining a union could be reasonably construed by a school board as a threat to its authority. The Court of Appeals reversed this decision in July 1968 on grounds that the right to join a union is protected by both the First and Fourteenth Amendments. This was the first federal court ruling that union membership is a constitutionally protected right for teachers. Prior to that, teachers were often dismissed for union activities or for refusing to join the so-called "professional organizations," the Illinois Education Association and the National Education Association. The associations enjoyed favored status because they were controlled by school administrators, and because they opposed collective bargaining. The court ruling in the *McLaughlin* v. *Tilendis* case was a major blow to the elaborate defenses against union organization of teachers.

A second important court case, that helped to protect teachers in their union activities, grew out of the dismissal of a teacher in Lockport High School. The teacher, Marvin Pickering, had written a letter to the editor of the *Lockport Herald* in which he criticized harshly the school board's management of school district financial affairs. He was dismissed on grounds that his letter had harmed the reputations of the school board and administration, and that many of the statements in the letter were not true. Pickering's appeal of the board's action was pursued unsuccessfully in the state courts during the same time as *McLaughlin* v. *Tilendis* was developed in the federal courts. The IFT then appealed the case to the U.S. Supreme Court (*Pickering* v. *The Board of Education*). Interestingly, the Will County Circuit Court judge had said in his ruling that Pickering had been properly dismissed because a teacher "has no

Continued at the bottom of page 82.

OSCAR A. WEIL
Presently legislative director for the Illinois Federation of Teachers, an organization representing 50,000 elementary through university level teachers and other workers, he taught at the high school and community college level for nine years and served as president of a local IFT union for four years before joining the staff of the state organization in 1963 as first executive secretary and then executive director.

NO

Bergren says: "Increasing public sector bargaining and strikes in Illinois will mean greater costs of state and local government"

Continued from page 80.

the hands of the arbitrator, removing the voter-taxpayer even further from those political decisions.

Illinois, although without a collective bargaining statute (except in special situations, such as the Chicago Transit Authority and Regional Transportation Authority), already has had considerable public strike activity. In 1974, 781 of the 6,386 government units in Illinois were engaged in collective bargaining, despite the lack of a statute. Most of the units were school districts. Gov. Dan Walker's Executive Order No. 6 of 1973 extended collective bargaining to state employees under his jurisdiction. Illinois has been averaging 17 public sector strikes a year in recent years. But things can get worse. If history in other states teaches anything, a statute providing for compulsory collective bargaining for all state and local public employees in Illinois will greatly increase union organizing and strike activity, whether or not strikes are prohibited.

Increasing public sector bargaining and strikes in Illinois will mean greater costs of state and local government. State and local taxes, the combination of which now makes Illinois' taxes seventh highest in the United States on a per capita basis, will inevitably go higher. The pressures to shift more of the tax load to industry will increase.

Although taxes on manufacturers are ultimately paid by consumers, the taxes and other state-and-local government-imposed costs of a manufacturer must permit him to compete with out-of-state competitors. If they do not, the Illinois manufacturer may have to move or ex-

YES

Weil says: "Without the right to strike, unions cannot represent their members effectively and education will suffer in competition with other interest groups"

Continued from page 81.

right to criticize his boss." In 1968, the U.S. Supreme Court reversed the position taken by the Illinois courts and ordered Pickering reinstated in his job. In so doing, the court said that a teacher could not be fired for exercising free speech rights unless it could be shown that he had made statements that were "knowingly and recklessly false."

A third case of vital importance developed from efforts by the Chicago Teachers Union to establish a collective bargaining relationship with the Chicago Board of Education. Unlike other states, where public school teachers in the largest cities were in the forefront of initial efforts to win bargaining rights, Chicago had lagged somewhat behind smaller school districts in Illinois, such as East St. Louis, Granite City, Kankakee, Cicero, and Proviso Township. The Chicago Board of Education, like most school boards and other public employers, had maintained that it could not enter into a bargaining relationship with a teachers' union in the absence of a law specifically authorizing it to do so.

Finally, however, in the fall of 1965, the Chicago board authorized an election among the teachers to choose a bargaining agent. But a suit was filed in Cook County Circuit Court by James Broman, an official of the Illinois State Chamber of Commerce, for the purpose of blocking the election. Broman was joined in the suit by the Chicago Division of the Illinois Education Association. Defendants were the Chicago Board of Education and the Chicago Teachers Union. Ironically, Broman simply used a warmed over version of the board's old argument.

Cook County Judge Cornelius J. Harrington dismissed the suit and ruled that the Chicago Board of Education did have the authority to bargain exclusively with a union of its employees. The decision was appealed by Broman and the Education Association, but the Appellate Court upheld the ruling in the spring of 1966. More important, the court stated emphatically that, in the absence of a statute, public employers in Illinois have the authority to recognize unions for collective bargaining. The ruling was appealed to the Illinois Supreme Court, but was allowed to stand, becoming, as it remains today, the controlling law on the subject.

These court victories were important because they fostered organizing and bargaining successes of local unions, and also because they strengthened the resolve of IFT leaders to oppose any effort to deny or limit the rights of teachers.

On perhaps the most vital issue of all, the right to strike, progress for teachers has been agonizingly slow, at least insofar as the Illinois Supreme Court is concerned. In 1965 the Illinois Supreme Court ruled, in the *Redding* v. *Board of Education* decision, that public school employees do not have the right to strike. More recently, the court ruled, in *City of Pana* v. *Crowe*, a case which

pand elsewhere. Illinois already has serious business climate problems. Since 1969, this state has had a *net* loss of more than 202,000 manufacturing jobs, a drop of almost 15 per cent, according to the Illinois Department of Labor. Most of the jobs are going to southern states. None of them, from Texas to Virginia (except Florida), have public sector collective bargaining laws. In fact, North Carolina specifically prohibits collective bargaining with state and local employees.

Some states provide for collective bargaining only for teachers. However, because of the number of teachers and others in the educational establishment, and the fact that education is normally the largest item of state spending, the threat to state costs and taxes is great despite confining the statute to teachers. In fact, the growing power of teacher unions is little short of awesome. The National Education Association (NEA) has 1.8 million members and took in $200 million in 1974 directly and through its affiliates, much of which went for political action. Most public employee strikes involve teachers, and that includes Illinois.

Catharine Barrett, then president of the NEA, said, "We are the biggest striking force in the country and we are determined to control the direction of education . . . . We will need to recognize that the so-called basic skills, which currently represent nearly the total effort in the elementary schools, will be taught in one quarter of the present school day. The remaining time will be devoted to what is truly basic . . . war, race, the economy, population and the environment." What about the authority and responsibility of school boards, elected by the people to make such decisions? What does such a trend mean for self-government and democracy?

The vast majority of public employees are conscientious and dedicated Americans. None of the above remarks should be interpreted as implying any sinister conspiracy on the part of organized public employees. But the nature of collective bargaining and union leadership, and the history of public employee union activities, serve to validate the conclusion that Illinois does not need and should not have a general statute providing for compulsory collective bargaining with organized public employees. As to the right to strike, if there is collective bargaining, there will be strikes, whether or not they are legal.□

---

grew out of a strike by city employees, that the state Anti-injunction Act of 1925 (*Ill. Rev. Stat., 1975,* Chap. 48, sec. 2a), which prohibits the issuance of court injunctions in collective bargaining disputes, does not apply to strikes by public employees. In a majority of the more than 70 strikes by IFT unions over the past 18 years, courts have issued injunctions against unions even though no Illinois statute prohibits strikes by teachers.

Over this period, teachers have proven that their unions can influence the allocation of money at the state and local level. Contracts negotiated by IFT locals have given teachers a voice in many matters of educational policy. Academic freedom has been strengthened. Teaching conditions have been improved by negotiated reductions in class sizes, increased time for planning, and by the employment of more teachers to expand programs in art, music, physical education, and education for the handicapped. Average teachers' salaries in the elementary and secondary schools increased from about $5,000 in 1960 to nearly $14,000 in 1976.

In 1969, twelve IFT local unions conducted strikes. Many of the issues were non-economic, but demands for reductions in class sizes, more time for planning and expanded services to students were expensive. Contract settlements by IFT local unions in 1969 provided salary increases averaging 10 per cent. As an example, Kankakee teachers struck in May of 1969. The strike was bitter, with the school board using every device possible, including a court injunction, fines and jail sentences. The teachers persisted and the strike settlement provided salary increases ranging from 13 per cent for the most experienced teachers to 16 per cent for beginning teachers. The school board also agreed to hire 8 per cent more teachers and to provide improved insurance benefits and funds for teaching supplies.

Pressure from bargaining by teachers with local school boards caused demands for more state aid and increased pressure for enactment of the state income tax.

Without the right to strike, unions cannot represent their members effectively and education will suffer in competition with other interest groups. During the period from 1960 to 1973, the percentage of the gross national product (GNP) devoted to education increased from about 5.2 per cent to 8 per cent. It was in this period that teachers established collective bargaining in education. But a combination of aggressive postures of school boards in bargaining, the use of court injunctions against teachers' strikes, and the refusal of political leaders to allocate more money for instructional services has leveled the percentage of the GNP devoted to education to around 8 per cent.

Because of inflation, teachers' salaries have increased at about 5 per cent a year, while other operational costs of schools and colleges increased at an annual rate of 10 or 12 per cent. In the school year 1976-77, salary schedules have been frozen for nearly a third of public school teachers at 1975-76 levels, while other operational costs have continued to rise at the same rate as in the general economy. This is true partly because workers in the construction industry, manufacturing, transportation, communication, and other segments of the economy have demanded and bargained fair increases in wages. Academic employees in the state's university system have been especially hard-hit by their unfavorable legal status. The state's university teachers received only a 2.5 per cent salary increase for the 1976-77 academic year, supplemented by another 2 per cent added in December 1976 by the General Assembly's override of the governor's reduction veto of university appropriation bills.

Most of the powerful groups and individuals who oppose collective bargaining and right-to-strike legislation do so for economic reasons. Public employers, they argue, may not be able to raise the money necessary to pay negotiated salary increases. But the real reason is that they are opposed to education having a bigger share of the economic pie. As with other rights and liberties that have been secured by teachers in the long struggle to establish unions, the right to strike must inevitably gain the protection of Illinois law.□

By JOYCE E. KUSTRA

Reprinted from Illinois Issues, June 1977

Full funding and the resource equalizer formula

State aid to schools

ONE OF THE most quoted sentences from Illinois' 1970 Constitution is the statement, "The state has the primary responsibility for financing the system of public education" (Art. X, sec. 1). Since 1970, the state's share of financing elementary and secondary education has climbed from 30 per cent to almost 50 per cent and education has become one of the state's heaviest funding responsibilities. Legislators, teachers, and just about everyone interested in the education of the children of Illinois have debated how much money the schools need, how much the state's sagging budget can bear, and how the funds should be distributed among the state's school districts.

In 1973, the complex, controversial "resource equalizer formula" was adopted and became the primary method used to compute how much money a district will get from the state. The Illinois Office of Education has determined that it takes an average of $1,260 a year to educate a child, and the formula is designed to equalize the money available to all of the state's students by equalizing the value of resources (taxable property) in the state's economically diverse school districts. Equal access to education has been an issue in several states where school financing systems were similar to the method used by Illinois before 1973. In those states, the courts usually found that funding formulas denied equal access to quality education. When a wide range of taxable wealth dictates the amount of money available to educate students, it follows that an equally wide range will exist in the distribution of the funds and the quality of education. The U.S. Supreme Court, however, did not endorse these findings when it declared that the Texas education system, although it might be inequitable, was not unconstitutional. It left the decision to change unfair school aid systems with the states.

JOYCE E. KUSTRA
A graduate of the Public Affairs Reporting Program at Sangamon State University and formerly employed as a secretary for the Illinois Senate, Joyce Kustra resides in Glenview and is active in community and local affairs.

Strayer-Haig plan

In 1973 Illinois revised its school aid formula in response to the equal access argument heard around the country. The new law added a second alternative for computing a district's share of the state's education dollars. The original plan was the 50-year-old Strayer-Haig formula (named for its authors in the state of New York where the plan originated). It was designed to guarantee every school district a "foundation" level for providing adequate education of each pupil. All districts would have a financially equal starting point, although the plan ignored the local disparity in wealth in the local districts' ability and willingness to add to that base. In its first year (1927) the foundation level was $34 per pupil from state and local funds. The bulk of education funds came at the local level. In 1973, the Strayer-Haig system guaranteed a foundation of $520 per student. By this time, however, several other stipulations had been incorporated to account for special needs, so many students were actually receiving more. This practice is known as "weighting," or counting individual students more heavily to increase the district's state aid.

Under the Strayer-Haig plan, high school students, whose education was judged to be more costly, were weighted at 1.25 (for every $1 given at the grade school level, its value was $1.25 at the high school level). Also a larger share of the state's funds was directed to poorer districts by allowing them an 8 per cent "add-on" (this figure has been gradually increased to the current 25 per cent). Another boost to poorer districts is a "density bonus" which was added for districts with more than 10,000 students. This provision expired in 1974 on the premise that density and poverty aren't always related and was replaced by an extra .45 weighting factor for Title I children (those from families with annual incomes of $3,000 or less), a designation used in the Federal Elementary and Secondary Education Act of 1965 to aid impoverished families. These weighting factors are incorporated into the final student population figure of a district to come up with what is called the weighted average daily attendance (WADA).

In spite of these provisions, the Strayer-Haig plan does not alter the fact that a wealthier district can add to the "foundation" and thus provide a better education for its children than a poorer district. As a result, the old plan was actually a favorite of a few wealthier school districts who were reluctant to give up favored status. Because they found that they fared much better by computing under the old method, the legislature worked out a compromise by giving the local districts the choice of receiving aid under either plan rather than scrapping the Strayer-Haig formula. Only 165 of the state's 1,019 school districts file for state aid under the Strayer-Haig plan and receive only about 1 per cent of the state school aid funds.

Common School Fund

The Common School Fund dispenses approximately 80 per cent of the education dollars in general state aid through the mechanism of the resource

equalizer formula. Additional aid is given to local districts through categorical grants, that is, grants for specific needs such as special education. Aid from the Common School Fund, however, is by far the largest source of state education funds, and the formula is the way the amount of these funds is determined.

The formula is based on three factors: tax rate, assessed valuation and pupil attendance. The basic principle undergirding the formula is that state aid should be based, not on a district's property value, but on the willingness of a district to tax itself. The state guarantees to equalize assessed valuation (thus allowing poorer districts to compete for funds with the wealthier), so, in effect, state aid will increase with an increase in local tax rate, and any district taxing at the maximum should qualify for $1,260 per student in weighted average daily attendance (WADA).

Tax rate ceilings

The local taxing effort varies from district to district and is totally controlled by the district. The state has set a ceiling on the tax rate it will accept in computing the formula. The variance in the ceiling for the three kinds of school districts — grade school districts, high school districts and unit districts with students from kindergarten through grade twelve — makes it easier for some to get state money than for others. This is especially true for the high school districts whose maximum tax rate is 1.05 (or $1.05 per $100 of assessed valuation). The state's high school districts, which benefit from a stipulation which says they do not have to seek voter approval to raise taxes, are already taxing at or above this maximum (the local tax levy which exceeds the ceilings cannot be used in computing the district's state aid, but does generate more local property tax revenues). The two other types of districts, however, have a much harder time raising their tax rates. Grade school districts must tax at 1.90 per cent to receive maximum benefits under the formula ($1,260 per student). The third type of district, unit districts, have a 2.90 ceiling. Both grade school and unit districts must seek voter approval to raise taxes to the maximum rates. In 1976, legislators dealt with this problem by lowering the previous limits of 1.95 and 3.00 for grade school and unit districts respectively to the current 1.90 and 2.90. This change was part of a package of six school aid revisions, four of which altered the formula. Chicago's schools fall under regulations contained in a separate section of the School Code. The Chicago system has sufficient taxing power, without voter approval, to levy the taxes necessary for maximum benefits under the formula.

Any amount a district levies beyond the maximum, as mentioned above, cannot be used to calculate its state aid. Until the 1976 revision, districts whose rates were above the ceilings were required to "roll back" gradually to the ceilings imposed by the state, that is, to actually lower their tax rate. The 1976 provision eliminated the "roll back," thus allowing districts to tax themselves higher at the local level without increasing their state aid. Most of the districts now taxing beyond the state limits are wealthier suburban Cook County districts.

A maximum tax rate would not do much good for a school district with a relatively low property value to tax if the state did not guarantee a certain level of assessed valuation. The formula is based on the value of all property within a school district. This is where the districts with low property tax bases get a boost. The state assures a school district a yearly sum equal to what the local tax rate would raise if its assessed valuation per pupil was equal to the level guaranteed in the formula. The state has set the guaranteed property values for each student in weighted average daily attendance (WADA) at $66,300 for grade school districts, $120,000 for high school districts and $43,500 for unit districts. The guaranteed level for grade school and unit districts was raised last year by the General Assembly in the same law which lowered the tax rate ceilings of these districts. Previously the levels were $64,615 and $42,000 respectively.

> The state has set a ceiling on the tax rate it will accept from local districts when computing the formula

Title I designation is the feature which means the most to inner city districts when computing their share of state aid under the resource equalizer formula. The Title I provision plays a greater role in the new formula than it does under the Strayer-Haig plan. According to the 1973 formula, students designated as Title I eligibles by the Federal Elementary and Secondary Education Act are weighted on a sliding scale (zero to .75) to account for the concentration of Title I students in a district. A local school district with the same proportion of Title I students as the state (18.2 per cent), could count on .375 per cent extra weighting for each eligible student. As a district concentration exceeds this 18.2 per cent statewide proportion, its weighting increases in relation to the concentration of Title I students up to the maximum of .75.

Attendance calculations

The number of students in a district is calculated on the basis of average daily attendance rather than enrollment as an incentive to keep attendance high. With the special weightings designed to favor poorer children, the weighted average daily attendance (WADA) of a district is the student headcount used in computing state aid. Because many state schools are experiencing drastic declines in enrollment, WADA was also an issue in the 1976 legislative session. Arguing that these declines don't always mean a corresponding decrease in costs, school administrators called for a means of "cushioning" the financial impact. They received the "cushion" in a state law which allowed a district to use the higher of two WADA figures — either the present year's attendance or the average attendance of the three previous years. This average was a welcome alternative to those districts which felt they might have to make equally drastic cuts in programs for the remaining students.

As an example of how these three factors produce a district's share, take a sample unit district with a total assessed valuation of $200 million, an operating tax rate of 2.80 and WADA of 10,000 students. This makes the assessed valuation per pupil $20,000. This figure is deducted from the guaranteed assessed valuation figure of $43,500, leaving $23,500 to be multiplied by the

2.80 tax rate, then by the 10,000 WADA. The total is $6,580,000 or $658 per student. The local tax rate would produce $560 ($20,000 x .0280). Thus the district would receive the total of the local and the state share, $1,218 per student with the maximum of $1,260 allowed by law. If the sample district raised its local taxes to the 2.90 ceiling, it would receive the maximum.

The resource equalizer formula was also changed in 1976 to aid more rural districts by allowing districts to include taxes on school bus transportation in their operating tax rate. Rural districts did not gain as much from the 1973 reform as did school districts in the large cities and in the suburbs. This is because of the higher property values, lower tax rates and smaller concentrations of Title I eligibles in the rural districts. The inclusion of the transportation tax and the lower tax rate ceiling for unit districts, both effected in 1976, attempted to correct this inequity.

The law which was the vehicle for changing the school aid formula in 1976 also included two more provisions not affecting the formula. The first reduced by $24 million the $55 million penalty Chicago schools had incurred for closing early in spring 1976. The second was a "hold harmless" provision, a one-year-only measure to protect a district from losing money for fiscal year 1977 because of the formula changes. It guaranteed the district would get at least the amount it had counted on before the changes.

The 1976 legislative package of formula changes fell victim to political squabbling between the governor and the legislature, a development which left local school officials uncertain as to how much money they could count on for the school year. After the General Assembly failed to pass a tax acceleration package proposed by Gov. Dan Walker (which he estimated would bring in an additional $95 million this year), the governor decided to give the legislators one more chance in the fall session. He said he could only afford to make the formula changes effective immediately if the General Assembly would reconsider his tax speed-up measure and pass it. Finally in the fall session, the legislature approved a portion of Walker's tax plan in return for his signing the formula changes.

Phasing in full funding

As originally designed in 1973, the resource equalizer formula would have been fully funded in the 1973-74 school year, fiscal year 1974, ideally providing $1,260 for every student in WADA where the local district chose to tax itself at the maximum. But because of the demand this would place on the state treasury in a single year, the plan was

State aid to schools

The money just isn't there

STATE SCHOOL finance legislation was termed a "Christmas tree" last year because it had so many amendments hanging from it. Besides making substantial changes in the school aid formula, these amendments represented battles between political and regional factions over an amount of money for state school aid which was considerably less than had been anticipated when the formula was approved in 1970.

This year there'll be a lot of tinsel but not much in new money for schools. The money situation is again tight, with Gov. James Thompson's budget calling for only $75 million in new education spending, $150 million less than what the Illinois Board of Education said was needed. With the governor and the General Assembly attempting to avoid a general tax increase this year, most of the proposed legislation on school funding have been piecemeal efforts.

"The reality of the situation is that we can't fully fund this year because of limited funds," said Sen. Arthur Berman (D., Chicago), "in changing the formla we'd just be shuffling around the same limited dollars." Berman, chairman of the Senate Elementary and Secondary Education Committee, predicted a "rough time" for schools during this year's session.

Most legislators are hesitant to propose changes in the school aid formula itself, with some looking for ways districts can generate more money locally.

A measure introduced by Berman would not increase funds but would alter the method of payment to school districts. S.B. 293 provides for "school districts to receive full entitlement" for 10 months, from August through May, Berman said. The amount of the last two payments would depend on how much money was left for schools. The bill is designed to help districts overcome cash-flow problems. However, the bill is opposed by the Thompson administration which sees it as a serious threat to the state's ability to pay bills throughout the year. Berman said the office of Comptroller Michael Bakalis, a Democrat, supports his bill and does not foresee a dangerous cash drain for the state.

Rep. J. Glenn Schneider (D., Naperville), chairman of the House Elementary and Secondary Education Committee, is sponsoring H.B. 694, which would extend to fiscal 1978 the practice of making quarterly payments to districts for special education and transportation. A similar measure was passed last year, but it was in effect for 1977 only. Schneider's bill passed out of his committee early in April and looked likely to receive strong support in the full House.

A different twist at helping local school districts is S.B. 244 sponsored by Sen. Bradley Glass (R., Northbrook). It would permit school districts to discontinue or modify programs when the state reimbursement is less than the amount necessary to pay claims in full.

Several bills affecting the school aid formula and the "hold harmless" provision were introduced during the session and were scheduled to be heard in the education committees the end of April. Among these are H.B. 753 by Schneider which would change the resource equalizer formula so that the maximum value of tax rates to be used would be 3 per cent (now 2.90) for unit districts and 1.95 per cent (now 1.90) for elementary districts. Under last year's Christmas tree bill, the unit and elementary tax rates were lowered from 3 and 1.95 per cent to the present levels. Schneider's bill would reverse that action and tend to help suburban Chicago schools.

Two bills filed by Rep. Richard Brummer (D., Effingham) deal with the formula in an effort to avoid losses a number of districts face as a result of 1976 assessed valuation. H.B. 1880 would allow districts to regain 100 per cent of the expected loss, while H.B. 1958 would only guarantee 25 per cent.

Full funding of the formula appears doubtful for the third year in a row because of tight money and last year's changes

altered in the General Assembly to spread the increase over four years. In the first year, 1973-74, the local school districts received one-fourth of the increase as computed by the resource equalizer formula. Actual claims paid totaled $914 million. In the second year, 1974-75, they received one-half of their total increase, with total payments of $1.054 billion. In these years, because of the decision to phase in full funding, school experts considered the formula to be fully funded.

However, for the 1975-76 school year, when districts were expecting their claims to be funded at three-fourths of the computed increase, Gov. Walker reduced the appropriation to provide only 95 per cent of the three-fourths figure. The state paid out $1.173 billion in claims. In the current 1976-77 school year, the year scheduled as the fourth and final step to actual full funding, the formula is being funded at 89 per cent of the actual full claim as computed by the local school districts. Total payments are approximately $1.250 billion.

The fiscal year 1978 budget is now before the General Assembly, and full funding of the formula appears doubtful for the third year in a row. This is due to several factors. First of all, the state is still suffering from the tight money situation which first plagued it two years ago. Second, Gov. James R. Thompson is determined to hold spending at the $10 billion level; his total recommended budget calls for only $311 million in new state spending above the current year's budget. With a two-year term, Thompson cannot afford politically to be forced into an increase in the state's income tax either this year or next. In giving elementary and secondary education $75 million more than this year, he pointed out that education received the biggest hike of all areas in his budget. He also admitted that he expects education to be the biggest controversy as the legislature appropriates for fiscal year 1978.

The six changes which passed last year combine to make yet another problem area in fully funding the school aid formula. The cost this year of those changes is estimated to add approximately $111 million to formula costs. The Illinois Office of Education has projected that it will cost $1.386 billion

H.B. 1880 includes the "hold harmless" clause, which would give the districts the option of using 1975 or 1976 assessed valuation (equalized by multiplier) and the option of using the 1975 or 1976 operating tax rate. They could thus avoid the loss of any state aid. The second bill, which applies to all counties in which the assessed valuation increased, would allow districts to use either the 1975 or 1976 tax rate in computing the school aid formula. The second bill does not mention an option on the assessed valuation.

Perhaps the most daring proposals on funding schools is legislation to allow school districts to levy income taxes. Proposed by Rep. Jim Edgar (R., Charleston), H.B. 788 would allow school boards to ask for a local income tax that would supplement money raised through property taxes. A second variation was proposed by Sen. Vivian Hickey (D., Rockford). Her bill would allow districts to replace property tax with income tax for purposes of supporting schools.

State mandated programs

In Gov. Thompson's state of the state address, he noted that in the course of his campaign he found that "local people had little to say about the wisdom or necessity of programs imposed on a statewide basis and perhaps most importantly, once mandated, state programs are inadequately funded by the state." At the time he said it would be his administration's policy to reexamine state mandates. While professing education to be his "number one priority," Thompson said, "An education program can be every bit as outdated, inefficient and duplicative as a state program in any other field."

On April 20 he announced the appointment of 23 members to the Commission on State Mandated Programs, with a subcommittee assigned to education matters. James Nowlan, the governor's special assistant on education, is heading that panel. At the first organizational meeting, the subcommittee decided to study those programs statutorily mandated and those which require fiscal support.

There are now 16 education programs mandated in the statutes. These are in addition to those basic courses of study such as language arts and math which are required by statutes and the Office of Education regulations. The 16 are: adult education, adult education with public assistance, adult education basic, special education transportation, special education private tuition, special education extraordinary, special education personnel reimbursement, special education orphanage tuition, bilingual in Chicago, bilingual downstate, regional vocational education, breakfast-lunch, vocational education, textbook loan, deaf-blind, and materials for visually handicapped.

The legal section of the Office of Education is currently compiling a list of mandated programs. Those which might come under question this year are the length of the school week, health regulations such as those regarding air circulation, certifying levels for school nurses, driver education and desegregation. While desegregation is not a program as such, it is a situation that requires funds.

The Office of Education wants to add two new programs this year, contained in H.B. 2361, sponsored by Rep. Thomas Hanahan (D., Chicago). The ESR model program would provide $250,000 to educational service regions for regional programs. The desegregation assistance program provides $2 million in grant funds for district programs.

The State Board of Education in March initiated a policy development process that would put most major education issues under scrutiny during the next three years. School finance will be a principle subject in fiscal 1978 and mandated programs will be a topic the third year. In June 1976 the board named a blue-ribbon citizens commission to conduct a major review of state aid programs to local schools. The commission has studied the problems with the state's resource equalizer formula, variations of wealth and assessment practices in local districts and funding categorical grants on a current year basis. The commission's recommendations were to be presented to the board May 4. / *Mary C. Galligan*□

to fully fund the formula for fiscal 1978, with these changes in effect. If the 1976 package had not been incorporated into the plan, it might have been fully funded in 1978.

The formula's future

With school funding at the center of almost every debate over state spending, the big question is whether the new formula is working. Are schools better off than they were before? With the resource equalizer formula in use for the fifth consecutive year, some answers should be emerging.

Dr. Ben C. Hubbard of Illinois State University, who was one of the architects of the formula, claims that one only has to look at the state aid that went to schools in 1973, the year before the formula was instituted ($800 million), and the current level of funding under the formula ($1.250 billion) to see that it has raised the state's share of funding schools by 50 per cent. That alone, he says, should be the answer. But he adds, "The formula is working — at the 1973 dollar level." He explains that the formula was designed to withstand some degree of inflation, but not the double-digit inflation it has experienced. He says the money is now going to the poorer schools as it never did before. He cites downstate Cairo and East St. Louis as two previously impoverished districts where the formula was a "lifesaver," and where the schools can now offer their students a real education.

Dr. Hubbard says there are two reasons local schools are struggling under the formula. If it can't be fully funded, he says, it can't be expected to equalize the level of education. Hubbard says that it's time for the General Assembly and the governor to realize that if they really want quality education, they must pay for it, through a tax increase — a solution, he says, that the politicians won't consider at this time. The second problem with the formula, according to Hubbard, is the failure of local school districts to plan. He says as enrollment drops, schools could shift burdens and save money if they faced the problem instead of insisting costs don't decrease along with enrollments. At some point, he says, costs do begin to decrease.

State Sen. Arthur Berman (D., Chicago) is one of many legislators who agrees with Dr. Hubbard that the formula is sending money where it's most needed. Berman represents three school districts, one in Chicago and two in Evanston. He says Chicago's problems are critical, but doesn't think there's enough state money to bail them out. He maintains that last year's changes provided "greater equity all the way around." And Berman says if Gov. Thompson has underestimated this year's revenue, as he believes is the case, the legislature might be able to appropriate state aid at a higher level.

But some legislators and school officials from districts which receive minimal aid under the formula don't agree that it is working. In some downstate school districts where assessed valuation is relatively high, tax rates are low and the voters are reluctant to raise them. One solution proposed by some downstate lawmakers this spring would allow local school districts to impose an income tax upon referendum approval. An income factor in the formula would work to the advantage of rural districts whose farmlands put them in the high assessed valuation category. Sponsors say, however, that property no longer is synonymous with wealth or high income. They argue that an income tax would be more equitable than the property tax. A local income tax, the downstaters feel, could even reduce property taxes. Obviously, this idea would meet with stiff opposition from income-wealthy suburban legislators as well as central city lawmakers whose areas benefit more from the current property adjustments than they would with the income tax.

> If the governor and General Assembly really want quality education, they must pay for it through a tax increase

Some further changes might be in store for unit districts, mostly found outside the Chicago area. Unit districts now have a 12-cent limit on their transportation tax rate. If the General Assembly would agree to allow unit districts to raise transportation taxes as high as 24 cents without voter approval, these districts might get a larger share of the pie.

Some observers feel that the reluctance on the part of the voters to increase local tax rates, and thus increase state aid, deprives the children of a quality education and should be circumvented. One solution sometimes mentioned is to leave the decision to raise taxes with the local school boards, a politically impractical position which is not taken too seriously.

The General Assembly could decide to drop the Strayer-Haig formula and require all districts to compute their state aid by the resource equalizer formula. This would save the state about $8 million, but the $8 million loss could be crippling to several districts now receiving state dollars through the old Strayer-Haig plan. For this reason, the plan will not be easy to scrap.

There are still those who argue for abandoning the whole system of equalizing aid in favor of a flat-rate per student payment to districts. But these individuals are a minority, and this alternative is not likely to emerge as a threat to the formula. No school district is getting more than it needs, and most are getting less than they want. Yet, few are blaming this condition on the formula.

It must be remembered that the resource equalizer formula is simply a mathematical mechanism designed to equalize the amount of education money available to the students of the state. It cannot eliminate all of Illinois' educational inequities, especially if the myriad factors which shape a child's life are considered. The formula addresses the education issue from one front by attempting to provide equal support to all students.

Since the one ingredient that the state will guarantee under this plan is a school district's assessed valuation, high property value is no longer the determinant of a quality education in Illinois. The district which will benefit most from the resource equalizer formula would be the district with the maximum taxing rate, a good share of Title 1 students and a stable or increasing enrollment. Ideally, districts like these are the ones most deserving of state funds. Any local district not meeting this description will probably not agree, but at the present time the formula is in no real danger of extinction.□

Reprinted from Illinois Issues, September 1976

By PETER MANIKAS and WILLIAM L. HOOD, JR.

Campaign finance disclosure: Now that the public knows, is there really a choice?

'. . . disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. . . . A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that are given in return.'

—*Buckley et al.* v. *Valeo, Secretary of the Senate, et al.*, decided by U.S. Supreme Court Jan. 30, 1976

PETER MANIKAS
Research coordinator for the Better Government Association, he formerly served on the staff of a U.S. congressman in Washington, D.C.

WILLIAM L. HOOD, JR.
A graduate of Northwestern University School of Law, he was an attorney/investigator for the Better Government Association for six years and recently joined Continental Bank as a governmental relations attorney.

ON JANUARY 30, 1976, the U.S. Supreme Court upheld the disclosure provisions of the Federal Election Campaign Act. The court merely restated the wisdom of Justice Brandeis' statement of 50 years before: "Sunlight is said to be the best of disinfectants; electric light the most efficient policemen." Unfortunately, the court's opinion is better history than prediction. Campaign ledgers are open to public scrutiny but, in Illinois at least, the role of money in politics remains unchanged. Special interests and individuals who have received government contracts and jobs continue to inject a steady stream of cash into the campaign coffers of both political parties.

In federal elections, campaign funds disclosure has been required since the first decade of this century (36 Stat. 822, 1910). However, Illinois did not have a disclosure law until September 3, 1974, when the Illinois 78th General Assembly embraced the philosophy that the sources of campaign funds should be revealed (P.A. 79-1183). The linchpin of the new law is the reporting requirement of Article 9. Statements are filed by a candidate or political committee with either the county clerk or the State Board of Elections itemizing contributions received and expenditures made in excess of $150. The reports must be made available for public inspection.

The legislation's underlying assumptions are clear: democracy will be cleansed if the amount and source of campaign contributions are known. Special or corrupt interests will be intimidated by the prospect of public visibility. In any case, informed voters will be able to contrast the financial support of political opponents and cast their ballots accordingly.

Recent reports detailing how campaigns for major public offices in Illinois have been funded challenge these assumptions. Through the maze of electoral politics, one central question has emerged: if our objective is to restore confidence in the political process, is disclosure enough? Because of the new law, we can now paint a fairly accurate portrait of who gives and who gets political money in Illinois. At both the state and local level contributors with a financial stake in government play a prominent role.

In Chicago, of course, old-style party politics dictate the pattern of political money-giving. Since the days of Mayor Anton Cermak the Democratic party's monopoly over patronage, pressure and the election machinery has guaranteed large political war chests. It should come as no surprise that a large portion of Mayor Richard J. Daley's financial support comes from those receiving favors from city hall. Public disclosure of the mayor's campaign receipts merely confirms what cynics, at least, long presumed to be an eternal verity of Chicago politics. Analyzing the mayor's campaign reports, *Chicago Tribune* reporter Chuck Neubauer found that government contractors, city employees and public officials who rely on the mayor's approval for slatemaking contributed one-half of the mayor's itemized campaign funds during the last mayoral election. Over one-quarter of approximately $600,000 itemized came from contractors and others doing business with the city (*Chicago Tribune*, March 30, 1975).

Leading the list of contributors are architects, engineers and law firms who receive non-bid contracts for city business. Bankers, many from banks receiving interest-free government deposits, contributed over $4,000 to a Cook County Democratic fundraising dinner in May 1975 (*Chicago Tribune*, August 28, 1975).

At the state level the same basic

pattern has emerged. Those with a financial stake in state government are also substantial investors in the political process. The Better Government Association (BGA) has detailed how State Fair contractors were solicited for contributions to the Governor's Illinois Democratic Fund (IDF) in 1974. In a sworn statement, the assistant State Fair manager reported that he had contacted contractors about making $1,000 donations. A Sangamon County grand jury found that the fair management had earlier awarded over $1 million worth of improperly bid contracts (*Chicago Sun-Times*, March 2, 1975).

Out-of-state contributors

Last August the BGA reported that highway engineering consultants who received $8 million in state contracts each provided IDF with $1,000 contributions. Contractors from as far away as Aurora, Ohio, and Bellevue, Washington, contributed to the governor's campaign fund. These out-of-state contributors received almost $2 million of state business (*Chicago Daily News*, August 14, 1975). The *St. Louis Post-Dispatch* and the BGA analyzed a series of large contributions from the St. Louis area reported by IDF in 1975 and found that many of these contributors' firms had contractual ties with the state (*St. Louis Post-Dispatch*, April 6, 1975). In response to these disclosures, Norton Kay, the governor's press secretary, said, "There is no law against donations from people who do business with the state" (*St. Louis Post-Dispatch*, August 14, 1975). Commenting earlier on the acceptance of such contributions, Kay said: "The important thing is that the public knows about it. The public has the ability to make a judgment of whether there is anything going on" (*Chicago Tribune*, March 3, 1975).

Right or wrong, the public does seem to suspect that political contributions may lead to political favors. A nationwide survey by the Twentieth Century Fund found that 35 per cent of those interviewed believed that large political contributions are solely motivated by personal gain. Another 34 per cent thought personal gain was one of several reasons for large political gifts (Twentieth Century Fund Task Force on Financing Congressional Campaigns, *Electing Congress*, 1970).

If public disclosure has not deterred the use of money from those who do business with government, it might still be claimed that at least now the public is informed. Voters can decide which candidates to support on the basis of how and by whom a campaign has been financed. Unfortunately, the available evidence suggests that disclosure often fails to achieve even this limited objective. The intense coverage of campaign financing during the last presidential election had little impact on voting behavior. Two experts in the field, David Adamany and George Agree, concluded that although 62 per cent of the people surveyed by the Twentieth Century Fund heard or received something about campaign financing, "what was heard, or at least remembered, was so indefinite and unclear that it was unlikely to prompt much attitude change or electoral judgment" (Adamany and Agree, *Political Money*, Johns Hopkins University Press, 1975, p. 107).

The local front

Disclosure did not fulfill its promise of reform at the national level in a contest literally overrun with issues of political finance. What might be expected then in contests at the local level, where the coverage of campaign financing is likely to be less complete? In its December 1975 number, *Illinois Issues* reported that 100 reporters, students and other citizens had inspected about 2,000 reports filed pursuant to the new state law. However, the quality and quantity of the information disseminated to the public is less easily determined. The finances surrounding Chicago's recent mayoral election and Gov. Walker's fundraising effort have been analyzed with some care, but financing for lesser office seems to have escaped attention altogether.

Moreover, despite the criticism directed toward Gov. Walker's fundraising practices, both of the present gubernatorial candidates, Republican James R. Thompson and Democrat Michael J. Howlett, accept contributions from firms receiving government contracts. Donors to the Howlett campaign include road builders, real estate firms, bankers and attorneys, all of whom receive business from some governmental unit (*Chicago Tribune*, March 14, 1976). Republican candidate Thompson stated early in his campaign that he too would accept contributions from state contractors, including those doing non-bid business with the state. The Republican candidate hastened to add that, "there will be no question about who owns Jim Thompson. Nobody does and nobody will" (*Chicago Sun-Times*, August 22, 1975). Yet, despite candidate Thompson's disclaimer, if both candidates' policy of accepting funds from such sources is not an anomaly, an important rationale for the law is undermined. The voter may be faced with the dilemma of choosing between two candidates of whose finances he disapproves.

Few complaints

The efficacy of disclosure is questionable on still other grounds. Effective enforcement of the law is doubtful. The State Board of Elections decided soon after its creation that it would not initiate its own investigations. Instead, the board only reacts to complaints filed by citizens or groups who must themselves monitor campaign practices. Furthermore, the few complaints brought before the board have not elicited strict application of the law. The statute is construed in favor of the respondent, since a criminal penalty might eventually be imposed if a violation is found. Individual state's attorneys and the Illinois attorney general have also failed to bring any complaints before the board.

This experience with state enforcement is consistent with the history of disclosure laws at the federal level. The report of the Watergate Special Prosecution Force criticized the Justice Department for having prosecuted only one case, in 1934, under the federal Corrupt Practices Act. No prosecutions have ever been brought under the more stringent statute prohibiting contributions from government contractors (*Watergate Special Prosecution Force Report*, October 1975). Prosecution of Watergate-related offenses was vigorous, but recent events cast some doubt on whether this momentum will be maintained. For example, the head of the Justice Department's Criminal Division stated last November that he would decline to prosecute certain cases despite Federal Election Commission policy to the contrary (*New York Times*, November 7, 1975).

Also, media treatment of campaign financing has been and may continue to be sparse. Ironically, the most widely reported campaign disclosure story

Disclosure could alter the outcome in a few elections. The problem is that as a remedy, it has been oversold

outlined attempts (albeit rather clumsy ones) to comply with the new law. Newspaper readers may remember that Alan Dixon, state treasurer, bought sheets and pillow cases and that Lt. Gov. Neil Hartigan chose to pay the rent for the swimming pool at his official Springfield residence with political rather than public funds. Both Dixon and Hartigan were acting legally and trying to avoid questionable use of public money. Yet the criticism heaped on them by political commentators and opponents has caused many to wince and doubt the wisdom of truthful disclosure of contributions and expenditures.

Clearly disclosure does have its virtues. For the few who are interested, it will provide more information about the political process. The possibility exists that candidates might effectively make an issue of their opponents' campaign contributions and expenditures. All other things being equal, disclosure could alter the outcome in a few elections. The problem is that as a remedy, disclosure has been oversold.

If disclosure has not been an unmitigated success, what more is needed? Most of the major provisions of the federal Election Campaign Act have been upheld. Nevertheless, serious problems are raised when governmental policies tend to limit campaign spending and the voters' access to information about candidates. Selective prohibitions and limitations on campaign funding have always been problematic. They often restrict political participation without achieving the desired reform. For example, corporate and union contributions are prohibited in federal elections, but the law does not prevent corporate or union officials from forming voluntary associations to solicit and dispense political funds. Of course, all associational contributions could be banned, but this would likely be viewed as an intolerable restriction on the political process.

A major issue in our present system of campaign financing is the threat that large contributions from wealthy donors will distort the political process. Limitations on the amount of contributions are a direct way of dealing with the problem but these limitations can also be evaded. The Supreme Court's recent ruling upheld limits on contributions to an official campaign for elective office. But the court also ruled that individuals cannot be prevented from independently making *expenditures* (rather than giving *contributions*), to promote a candidacy. Consequently a supporter can spend unlimited funds promoting a candidate as long as the candidate himself is not consulted on how the money is spent.

A call for reform

These are serious problems that go to the heart of campaign finance reform. Their recognition, though, does not mean that all reform will prove to be ineffective. Ultimately, a system of some type of public financing will probably be required. However, to overcome many of the criticisms of the present federal law, the underlying assumptions of our system of financing presidential elections must be reexamined.

The objective of reform should not be to establish a ceiling on campaign spending. Expenditure limitations favor incumbents and the two existing political parties. Instead, what is needed is a floor on the money available for political activity. Reform ought to ensure that candidates who demonstrate a minimum level of popular support have access to voters without necessarily appealing to powerful organized interests. It now costs approximately $2 million to run for governor of Illinois. In the 1972 race Daniel Walker spent $528,633 and Richard Ogilvie $702,293 on radio and television time alone (Broadcast Spending, 31 *Congressional Quarterly Weekly Rep.* 1134-37[1973]). In statewide elections a small subsidy for media outlays might go a long way toward encouraging additional credible candidates to enter the political arena.

Reformers might also profitably focus on the procedures that allow public officials such wide latitude in directing the flow of government business. Unfettered discretion is, after all, one incentive for government vendors to contribute to officials' campaign funds. For example, the mayor of Chicago shifted over $2 million of government business to his son's insurance firm not long ago. In many instances, the power to grant official favors is virtually unchecked: The state's Purchasing Act calls for competitive bidding as a basis for awarding most contracts, but contains major exceptions. For example, professional services are exempted from bidding requirements. Architects, lawyers, insurance brokers and an ever-increasing supply of consultants may be awarded lucrative contracts on a non-bid basis. Even when professional review panels are created to review awards, they are frequently composed of persons with the most to gain from public business.

This unchecked power to confer official benefits increases the possibility of preferential treatment. Examining how public officials exercise their power and determining how that power can be realistically confined lacks the appeal of a crusade to reform our campaign laws. But it might eventually turn out to be one of the most effective ways to remedy the abuses of big money in politics.

The problem of special interest money in political campaigns has been with us a long time. What is startling is not its intransigence, but that we expected so much from the simple mechanism of disclosure. Even when the far more stringent federal requirements failed to solve the problem, reformers persisted in trumpeting the glories that disclosure would bring. Campaign finance disclosure certainly has merit. Indeed, it is an essential component of any attempt to end the abuses of money in politics. In the long run it may increase the demand for reform. But alone it will not produce the results that were claimed in its name.□

Washington

Reprinted from Illinois Issues, October 1976

By TOM LITTLEWOOD

Supreme Court's anti-patronage decision bucks the federalist trend

"We deal here with a highly practical and rather fundamental element of our political system, not the theoretical abstractions of a political science seminar."

— Justice Lewis F. Powell Jr., dissenting in Elrod v. Burns.

CONTRARY to the impression the rest of the country sometimes has, political patronage employment was not invented in Illinois. The spoils system was developed to a fine art there though, and has thrived longer than in most places. So it was fitting that the U.S. Supreme Court's constitutional examination of the practice of giving government jobs to political helpers should have originated in Cook County. In one of the more hazily reasoned decisions of its last term, the court found that the use of political patronage to fill nonpolicy-making public jobs violated the First Amendment rights of those payrollers who had the misfortune of actively supporting the candidate who lost. Every American's freedoms of political belief and association are protected equally by the Constitution, and that includes partisan soldiers of fortune, declared Justice William J. Brennan Jr. for the 5-to-3 majority.

Recent decisions

The decision was all the more remarkable because of the strong federalist tide that seems to be running these days in the nation's premier courthouse. For the first time in 40 years, the court struck down an exercise of congressional power under the Commerce Clause when it was determined that the federal government lacked the authority to regulate the wages and hours of local police and firemen. Other decisions significantly restricted access to federal courts by those claiming a violation of their constitutional rights by the states. The same policeman whose working conditions are not subject to federal law cannot go to the federal courts for a hearing either if he is unfairly discharged. Mistakes will be made in the many personnel decisions made by public agencies, stated the newest justice, John Paul Stevens, and federal court is not an appropriate forum for reviewing them all. Nor can a federal judge compel a city police department to devise procedures for dealing with citizen complaints about police brutality. No longer, under the new rules, can a state prisoner petition for a writ of habeas corpus to challenge the legality of the way the evidence used against him was obtained, unless he can show that he had no opportunity to raise the constitutional issue during his state trial.

All are examples of what Chief Justice Warren E. Burger proudly described as steps taken to "arrest the denigration of States to a role comparable to the departments of France, governed entirely out of the national capital." He made that remark in a separate dissent from the majority opinion in the patronage case.

That class action suit was brought on behalf of the Republican-sponsored process servers and others who were fired when Richard J. Elrod, a Democrat, was elected sheriff of Cook County. Only about half the sheriff's employees are covered by a merit system. Brennan said the free functioning of the electoral system suffers when an employee, even one who obtained his job through the patronage system, is discouraged from working for the candidate of his choice because of a fear that he will be unemployed. "Rights are infringed both where the Government fines a person a penny for being a Republican and where it withholds the grant of a penny for the same reason," explained Brennan. No "vital government end" is furthered by conditioning public employment on political activity, certainly not more efficient public service, he added.

Powell, a patrician lawyer from Richmond, Va., argued that patronage contributed to the democratization of American politics and prevented the domination of an aristocratic class. It is naive to suppose that elections to minor offices and the performance of routine party chores between elections are motivated by some academic interest in "democracy" or other public service impulse, Powell said. "For the most part, as every politician knows, the hope of some reward generates a major portion of the local political activity supporting parties," he asserted.

Former Sen. Paul H. Douglas of Illinois was quoted in Powell's dissent as the source of a 1952 statement that "some support rooted in gratitude for material favors" is necessary for liberals to survive in Congress against "the powerful opposition of special-interest groups which will spend enormous sums of money to defeat us."

At a time when citizen identification with either party is in serious decline, Powell found that patronage can serve an important state interest by encouraging stable parties and avoiding excessive political fragmentation. He also cited historic evidence that patronage employment has been an aid to minority groups in their struggle for social acceptance. Thurgood Marshall, the first black member of the high court, looked aghast when that thesis was propounded during oral arguments. In any event, Powell, Burger and a third justice, William Rehnquist, considered the elected representatives in the Illinois legislature better equipped than judges to weigh the desirable balance between the merit and patronage systems. But, theirs was the minority opinion; the majority of five justices prevails.□

By TAYLOR PENSONEAU

Reprinted from Illinois Issues, March 1976

Government reform: BGA's controversial crusade

Not an official agency, it is financed by more than 3,000 individual and corporate members. It was founded as a guide to better government but began exposés under George Mahin as director. Today it has a small staff — 3 lawyers, 6 investigators

THE EXPOSURE of "evil, slimy things that have grown fat on taxpayers' money" is the avowed purpose of the Better Government Association (BGA), according to their 1963 annual report. The private watchdog organization, based in Chicago, has compiled a brilliant record in bringing to light the misconduct of public officeholders. Millions of tax dollars have been saved, and, in some cases, wrongdoers have lost their jobs and gone to jail.

Probing about in the darker corners of officialdom, however, has also embroiled the BGA itself in controversy. This is because the targets of various investigations often question the association's purpose and modus operandi. The counterattacks have succeeded, more than once, in slightly tarnishing the burnished public image of the association.

Consider the following list of public figures who have criticized the BGA. Chicago Mayor Richard J. Daley, whose Democratic machine often has been under fire from the association, has convinced many persons that the BGA is an arm of the Illinois Republican Party. Ray Page, a former state superintendent of public instruction and onetime power in the Illinois GOP, had good reason to regard the BGA as a tool of the Democrats. Page came under fire when serving as superintendent as a result of disclosures in a BGA investigation of spending practices in his office. It was alleged that Page's office circumvented Illinois law on various purchasing procedures. Much interest centered in particular on a revelation that Page charged the cost for publicity photographs of himself to an appropriation for financing special education for handicapped children.

Gov. Dan Walker and his lieutenants have come to view the association as a self-appointed prosecutor willing to use unsubstantiated charges and almost any other means to soil the image of officeholders. Walker's predecessor, Richard B. Ogilvie, questioned the fairness of several BGA undertakings when he was governor, even though Ogilvie had been an ally of the association in his days as sheriff of Cook County.

A major bone of contention between Ogilvie and the BGA revolved around an allegation by the BGA and a Chicago newspaper that Dan Malkovich, an acting director of conservation under Ogilvie, may have been involved in a conflict of interest because of certain advertising appearing in a magazine under Malkovich's control. The alleged incident took place during Malkovich's term as acting director. Malkovich, a Benton, Illinois magazine publisher, hotly denies any impropriety on his part, saying that "the incident was stimulated by someone with ulterior motives . . . the reporter and the BGA investigator were very unfair in the whole matter."

Major officeholders, of course, are not the most objective analysts of an organization which has persistently nettled the Chicago and state political establishments. A more accurate assessment of the association would fall between the extremes painted by its detractors and defenders.

The BGA is believed to be unique, and one is hard pressed to find similar agencies in other parts of the United States. Contrary to a belief in some places, it is not an official agency and it receives no government funds. Financing comes from the more than 3,000 individuals and corporations which now comprise its membership. Most of the tax-exempt contributions are relatively small. The largest one in 1975, totaling $5,000, came from Standard Oil Co.

The private status of the association

TAYLOR PENSONEAU
The Illinois political correspondent of the St. Louis *Post-Dispatch*, he has covered Illinois government for 10 years and has done a number of stories during those years in cooperation with the Better Government Association. A native of Belleville, Pensoneau is a 1962 graduate of the University of Missouri School of Journalism.

BGA has sought to force Walker to disclose donations to pay '72 debt, but court blocked this. Walker people say 'this little gang is clearly Dan's enemy,' bent on 'destruction'

denies it law enforcement powers, but there are compensations. Since it is not dependent on public appropriations, the association unquestionably enjoys greater flexibility than many official investigative agencies in determining the subjects, scope and procedures of inquiries.

The policing of the BGA's own staff is a responsibility of several panels. A board of trustees determines basic policy, reviews the performance of the investigators, adopts the budget and participates in fund-raising. Between meetings of the trustees, a board of directors governs the organization. Both panels are dominated by representatives of industry, business and Chicago's upper crust. There are Democrats as well as Republicans.

The association's expenditures in 1974 came to $349,071, a modest sum for such a major shaper of public opinion. That outlay was considerably more, however, than the $153,000 donated to the association in 1967 by individuals, businesses, foundations and trusts. These budget figures are just one indication of the BGA's growth. The establishment of a formal legal program to buttress the investigative undertakings, the recruitment of student interns to broaden research capability and the sponsorship of public symposia on various issues have taken the association into avenues broader than the gumshoe activity which put the BGA on the map.

Three full-time lawyers are on the staff at present, and there are six investigators, including the association's new man in Springfield, Patrick Riordan. Greater diversity on the staff, some observers have contended, is intended to give the organization that veneer of sophistication which a cadre of Sam Spades can't always provide. But, holds William L. Hood, BGA's former downstate coordinator, anybody maintaining that "we're trying to branch out just to gain respectability is full of baloney. The truth is that detection of government waste today is tougher because the officials have a myriad of legalistic, computer and other red tape mechanisms for obfuscating a monitoring of their activities."

Actually, the association has not always been a muckraker. Established in 1923 to increase voter participation in Chicago elections, the BGA was originally intended to serve as a nonpartisan guide to better government. The aggressiveness in exposing corruption materialized during the 10-year executive directorship of George E. Mahin.

The Mahin era, in which the BGA began investigating the Daley machine for the first time, as well as the underworld, would provide rich material for a Jimmy Breslin book. Mahin and his small crew, operating in those days out of an old office complex on Chicago's South Dearborn right over the noisy elevated railway, tackled big cases of finagling by politicians that federal or state agents would not touch.

They also went after many little cases, and some not too difficult, like the discovery of the Chicago street employees who unfortunately picked the basement of the old BGA building in the city for their sleeping quarters during working hours. Probes that made headlines during the Mahin era included the association's thrusts against the squandering of tax funds by the Chicago Sanitary District, against political hacks who made a dangerous mockery of the state meat inspection program and against massive cheating on truck licensing, partly as a result of lax enforcement by investigators for the secretary of state.

The success of these undertakings prompted grossly inflated estimates of the association's resources. The few reporters and other outsiders privy to BGA operations during Mahin's tenure regarded it as a shoestring setup that provided unbridled opportunity for a handful of professional crusaders. One of them, James F. McCaffrey, recalled recently the fertile ground that he stumbled upon after the Chicago office assigned him to Springfield in 1967 to establish a full-time BGA presence in the state capital. McCaffrey, now an investigator for the Illinois Department of Revenue, found it much more interesting in Springfield to read public records instead of novels. "Once you learned how to digest the stuff, the patterns of boondoggling came out as juicy tales better than any fiction," McCaffrey said. "The expense accounts alone that were filed by some state officials would have put James Bond to shame, even in his high living. It would have been funny if it didn't show such an abuse of the public trust."

Association staffers did more than read the records. Targets often were shadowed for days and more than one BGA operative spent a night or two crouched outside the home of an official. Mahin has been viewed by BGA enemies as the main figure behind the 1965 bugging of a Springfield hotel room in which three lobbyists discussed payments to legislators for votes. Mahin never admitted such a role. Later, a Chicago newspaper published excerpts from the tape recordings which indicated that some legislators were on the take. The public reaction was little short of sensational.

The glamour surrounding the BGA — some would call it notoriety — is largely attributable to the organization's cooperation with the press. Even when the association has gone it alone, a press conference is normally called to announce the findings.

The closeness of the association to journalists was brought out during George Bliss's four-year stint (1968-1971) as chief investigator for the BGA. Bliss, who was a top investigator for the *Chicago Tribune* before joining the association, returned to an investigative post with the *Tribune* in 1971. Pictures of Bliss were viewed nationwide in 1970 when he posed as a heart-attack victim in a Chicago apartment. As a photographer secretly recorded the event, two private ambulance attendants refused to transport Bliss to a hospital because he

had only $2 instead of the $38 they demanded.

The enhancement of BGA prestige by that inquiry, one of the organization's best, was tempered somewhat by a development that seemed to bolster the old assertion that the association is a branch of the GOP. Friedman, a lawyer who had been a Democrat, left the BGA to run for mayor of Chicago early in 1971 as a Republican. He was trounced by Daley. Earlier, Mahin had departed from the BGA to serve as revenue chief in the administration of Ogilvie, a Republican. In addition, the association's head investigator in the early 1960's, Joseph 1. Woods, later was elected sheriff of Cook County as a Republican.

Although the BGA has feuded with Republicans like Ogilvie, these quarrels have been mild compared to the antipathy between the association and the Walker administration. The tension may have been prompted in part by the refusal of J. Terrence Brunner, the BGA's current executive director, to go to work for Walker. In December 1973 the governor asked Brunner, a one-time head of the U.S. Justice Department's Pittsburgh Organized Crime Strike Force, to head the Governor's Office of Special Investigations, an operation responsible only to Walker.

Not long afterward, early in 1974, Democrat Walker abruptly fired or forced the resignation of several top officials in the state's regulation of the savings and loan industry, including Albert Pick III, Illinois Commissioner of Savings and Loan Associations, only hours before the *Chicago Daily News* planned to publicize apparent conflicts of interest involving the officials. The allegedly improper activity was turned up by a joint inquiry of the newspaper and the BGA. However, the governor credited his special investigative office with the discovery of the information which led to his action. To this day, BGA officials feel that Walker was able to blunt the impact of their investigation because the administration may have been tipped off to the upcoming stories by an association employee.

Since then, the association has collaborated with other newspapers on uncomplimentary disclosures about the administration's personnel practices, fund-raising activity and questionable management of the State Fair. State campaign finance disclosure records are said by the BGA to show that Walker, like many of his predecessors, has received most of his large contributions from firms and individuals doing business with the state. The association also contends that Walker associates have violated the Illinois political fund disclosure law by not reporting the sources of contributions for the retirement of Walker's 1972 campaign debt since Oct. 1, 1974, the effective date of the law. The BGA filed a complaint on this matter with the Illinois Board of Elections. However, the board was prevented from holding a hearing on the complaint because the Sangamon County Circuit Court upheld a contention in *Walker* v. *State Board of Elections* (see "Judicial Rulings," December 1975, p. 380) by Walker that the method for the selection of board members violated the Illinois Constitution.

The court ruling in effect restricted the Election Board to little more than clerical duties, a broad repercussion of this particular clash between Walker and the BGA. The antagonism is expected to have other reverberations. As one Walker assistant sees it, "It could become all-out war because this little gang [the BGA] is clearly Dan's enemy . . . dedicated more to his political destruction than any objective analysis of our administration." Norton Kay, the governor's press secretary, has argued in private that the BGA's treatment of his boss has convinced him, Kay, that "they often shoot wildly from the hip with nothing solid to back up their charges." Kay, who viewed the association in a different light during his days as a reporter in Chicago, now holds that "the time has arrived, perhaps, for somebody to take a serious look at their performance, for a change."

Almost all attempts to place the BGA on the defensive — such as an unsuccessful bill in the General Assembly 10 years ago that was designed to cripple the association's tax-exempt status — have been rebuffed. Furthermore, argues BGA Executive Director Brunner, the events of Watergate should erase any remaining doubt about the necessity for independent outside scrutiny of public officials. "We don't expect plaudits from those we're trying to watch," says Brunner. "Our growing membership, throughout Illinois, is all the proof we need of the right direction of our program."□

Reprinted from Illinois Issues, February 1977

By TONY LICATA

Limited lifespan for state agencies?

Sunset laws

Sunset laws put state regulatory agencies on the line for periodic review — and automatic extinction unless the legislature decides the agency is worth saving. Reflecting a general consensus that government should work better and cost less, the concept has the cautious approval of Gov. James R. Thompson and is already being tried in Colorado. The catch is that sunset reform could create more red tape and new political trade-offs

TONY LICATA
Currently a student at Harvard Law School where he is a member of the Journal on Legislation and the Legislative Research Bureau, Licata was formerly employed by the Illinois Capital Development Board as a program analyst. He has also been an administrative assistant in the Governor's Action Office and a reporter for the *DuQuoin Evening Call.*

THE SELF-DESTRUCTION of state agencies under what is commonly known as a "sunset" law received minimal attention in the past 79th General Assembly. But Illinois legislators may find it more difficult to avoid consideration of the proposal during the present session. The idea, which has received much attention nationwide, would require termination, or "sunset," of regulatory government agencies if they cannot periodically justify their existence.

Sunset laws are viewed by some as a potential solution to several problems widely believed to be the cause of ineffective government. Regulatory agencies tend to become "captives" of the group or industry they are created to police. There is a continual shuttling of high level executives from government to industry and back again, which, critics say, confuses and compromises the aims and policies of regulatory agencies. As far back as 1888 railroad lawyer and former U.S. Atty. Gen. Richard Olney foresaw this tendency and urged industry executives to drop their opposition to the first great regulatory agency, the Interstate Commerce Commission. Olney counseled that in a matter of time, the agency would come to share the industry's views and thus become a potent ally rather than an enemy. Accepting Olney's logic, backers of sunset laws claim that periodic review and possible extinction of agencies will expose and help eliminate such comfortable relationships.

A second reason for the idea's growing attractiveness is a general distrust of "big government." In 1975, pollster Lou Harris found that over 70 per cent of the American people felt they were not getting "good value" for their tax dollars. Sunset laws are seen as one way of shaping up wasteful bureaucracies.

Finally, there is much sentiment that agencies are often created in response to the demands of special interests and then retreat to obscurity in the labyrinth of government office buildings. Such agencies can often avoid careful scrutiny of their operation, but nonetheless continue to spend precious tax dollars. Advocates of the sunset concept believe performance review is the only way to justify the continued existence of such agencies.

During the past gubernatorial campaign in Illinois both candidates endorsed the principle of sunset laws. Gov. James R. Thompson said the government should start "by tackling the easier, smaller scale reviews first and learning from mistakes before undertaking massive review of large agencies." Some of the largest agencies, Thompson said, should not require review at all. Terminating the Department of Corrections, he said, "would be unrealistic." Calling for public participation in the review process and assurances that all dismissed workers are properly compensated, Thompson said a sunset law "would insure tax dollars are spent more economically and that state programs which do not work are eliminated."

The adoption of a sunset law by Colorado followed by Florida and Louisiana and the bills now being considered by the U.S. Congress and in several state legislatures have increased the intensity of debate on the idea. Most citizens, however, are essentially uninformed on the issue. If the public is to take a meaningful part in this debate it must know how sunset laws are intended to work, the problems which would keep them from working and the real benefits and costs likely to result from their adoption.

The idea of giving government agencies a limited life is not entirely new. Former U.S. Supreme Court Justice

William O. Douglas proposed a 10-year lifespan for regulatory agencies when he was director of the Securities and Exchange Commission. "The great creative work of a federal agency must be done in the first decade of its existence if it is to be done at all," he wrote. "After that it is likely to become a prisoner of the bureaucracy." President Franklin D. Roosevelt, reportedly amused by Douglas' proposal, ignored the suggestion.

Colorado Gov. Richard Lamm signed the nation's first sunset bill into law on April 22, 1976. Supported by legislators of every ideological persuasion, the law is aimed at a multitude of regulatory boards and commissions which license or regulate everything from barbers to hearing aid dealers. A total of 39 such organizations are marked for extermination over a six-year period. Agencies in related fields will be reviewed simultaneously so that they can be considered as a group and consolidated where desirable.

The heart of the Colorado statute is a section which empowers the legislature to continue the existence of any agency for a six-year period. If no such affirmative grant is made, the agency is abolished. It is this action forcing mechanism which gives teeth to sunset laws. Rather than forcing the legislature to abolish an agency, the law requires positive action to *save* the body. The burden of proof is on the agency's advocates, rather than its opponents, and all the pitfalls of the legislative process work against continuation, rather than for it.

If the legislature fails to act to extend an agency, it is given a year's grace to close out its affairs and continue its fight for survival.

Prior to legislative action, each house of the Colorado General Assembly must hold a public hearing in which the burden of demonstrating a public need for the continued existence of an agency must be borne by the agency itself. The law requires legislators to consider a list of nine factors, including the organization's effectiveness and the degree to which it has involved the public in its decisionmaking process. Colorado's sunset law is an attempt to force the legislature to carry out its oft neglected duty of overseeing the bureaucracy, and the public hearing clause is designed to give citizens and interest groups a voice in the extension decision.

The law was conceived by the Colorado chapter of Common Cause. Craig Barnes, a Denver lawyer, coined the "sunset" term. "It's like the end of the day for these agencies," he says, "and it's inexorable." Backers of the Colorado measure recognize, however, that the statute is not a panacea which will cure all the ills of bureaucracies. Much of the statute's success hinges on whether the required hearings are actively pursued. If the general public, the media, and business, labor, and consumer groups fail to provide the input required for an informed decision on continuation, then the statute is probably doomed to an unspectacular demise. There is a real danger that organized, well financed vested interests with strong lobbies may dominate the decisionmaking process, particularly if there is no organized opposition. How effectively Colorado (or any legislature) can mediate the claims of conflicting interest groups is an unresolved question.

The Illinois sunset proposal, which was introduced by a bipartisan group in the House headed by Rep. Harold A. Katz (D., Glencoe) is a virtual copy of the Colorado law. House Bill 3805, which was introduced too late in the 79th General Assembly to clear the House Rules Committee, targeted for extinction the Illinois Commerce Commission, Liquor Control Commission, Department of Insurance, Commissioner of Banks and Trusts, and various committees of the Department of Insurance, Commissioner of Banks and Trusts, and various comittees of the Department of Registration and Education. None of the Department of Registration and Education occupational licensing committees were specified.

Perhaps the major shortcoming of H.B. 3805 was that it did not specify the termination date of any agency. The bill merely delegated to a joint rules committee of the legislature the job of identifying the agencies and setting up a termination schedule. It did provide, however, that 30 per cent of the agencies were to be terminated in 1978, and 35 per cent more in both 1980 and 1982.

A major problem with sunset laws is that the legislature may not effectively carry out the review necessary for continuation of agencies. A major increase in legislative workload (and presumably in legislative staffs), particularly at the committee level, is an unavoidable by-product of any sunset law. Lawmakers, beset with numerous other problems during a limited session, may not be able to devote sufficient time to evaluate each and every agency slated for review. There is a definite danger that agencies might escape the critical evaluation essential to the law's intent due to the typical legislative "crunch" as the session's end draws near. Renewal of agency charters might become routine.

A different type of problem arises when the element of regulatory agencies' independence is considered. An agency might be deterred from making tough, controversial decisions for fear that resulting adverse reaction would damage its chances for continued survival. An agency which aggressively pursues its duties inevitably makes enemies. The legislative process is fraught with roadblocks and opportunities for pigeonholing. An agency which deserves to be continued might be wiped out due to a powerful legislator's ability to capitalize on quirks in the legislative maze. A threat of statement by such a legislator on a subject under consideration may well have a chilling effect on the agency's willingness to act.

A related problem involves legislative "logrolling," the term used to describe the process of trading votes in a coalition-building process. A series of votes on the continuation of government agencies presents lawmakers with a variety of opportunities to "cut deals" and "swap votes" for the rescue of pet agencies or on other items. The problem is that sunset laws contemplate evaluation of agencies and programs on the basis of their merits and are not intended to furnish grounds for deals. If legislators begin bargaining away votes on continuation of agencies, the concept's value would be greatly diminished.

Critics of sunset laws have also suggested that the device is in reality a gimmick by which elected policymakers

can evade political responsibility. By passing a single sunset bill, legislative bodies can abolish programs by silent but deadly "operation of law." This makes it possible for lawmakers to avoid hard policy decisions which may draw considerable attention. Any decision to abolish an agency should be made in open debate on its merits. By introducing the element of automatic termination the "deck is stacked" because a program's opponents can kill it with a vote in a subcommittee.

Still another wrinkle involves the timing of review. An agency scheduled to be reviewed every five years may be dealing with long-term problems, and it may be impossible to show substantial results within the review period. The task of establishing an agency's effectiveness is considerably more difficult when the problems it is tackling may not be solved for decades.

Conversely, what happens when four years of overall good performance is overshadowed by scandal or mismanagement which surfaces shortly before or during the review process? Say, for example, during the review period a scandal erupts involving payoffs to one or several agency officials. It is not inconceivable that a burst of bad publicity at a crucial stage in the review process could result in political pressure to let an entire agency or program terminate. Legislators would have to avoid being unduly swayed by such events.

A final problem with sunset laws is that bureaucrats may begin devoting more time to justifying their existence than to simply doing their jobs. The periodic trauma of near death may have a disheartening impact on agency morale. Sunset laws might even cause an expansion of government, as agencies begin adding personnel to handle the chore of periodically winning an extension of life.

Many of these observations are based on pure speculation; there simply is no experience on which to base any conclusions. Proponents of sunset laws, while insisting the idea offers promise, recognize that there are flaws yet to be discovered and refinements yet to be made. Much will be learned from the Colorado experiment, where Gov. Lamm admits, "We need to see how it works before we go further." Supporters and detractors of sunset laws in Illinois would do well to monitor the Colorado experience closely.□

BOOK REVIEW By W. PAUL NEAL, JR.

Samuel K. Gove, Richard W. Carlson, and Richard J. Carlson, *The Illinois Legislature/Structure and Process.* Urbana, Ill.: Published for the Institute of Government and Public Affairs by the University of Illinois Press, 1976, 189 pages, $5.95.

Explaining the legislative process

Reprinted from Illinois Issues, February 1977.

FINALLY, there is a basic, understandable primer on the Illinois legislative process. But a warning is in order: this "basic" primer is as complex as the process. It is not the kind of book you pick up for an evening of light diversion. It is, however, the kind of introduction the large incoming freshman class of legislators should keep at their fingertips for consultation. The book may also be the answer for high school and college teachers and students as well as those who want to learn more about what can be a frustrating and confusing process.

"This book describes the Illinois General Assembly — its structure, its process — to give the interested citizen, the student, and indeed the public official (including the legislator), a better understanding of this very complex and important legislative body." This goal, stated in the preface, is carried out admirably by an extremely well qualified team of authors. Professor Gove, who developed the book's concept and edited the manuscript, is director of the Institute of Government and Public Affairs of the University of Illinois and has supervised hundreds of legislative interns in the Illinois General Assembly, including his two co-authors, Richard W. Carlson, who is now on the staff of the Illinois Senate, and Richard J. Carlson, who is now director of research for the Council of State Governments in Lexington, Ky.

The book grew out of a grant from the American Political Science Association and has been in development for eight years.

The Illinois Legislature will explain:

Who the players are in the Illinois legislative process;

What the roles are of these players and how they interact;

The mechanics of legislative operation;

The nuts and bolts of bill passage;

The House and Senate rules at the time of publication of the book;

The role of legislative staffs;

Some recent, but dated, statistical studies on the flow of legislation, number of bills introduced and passed compared with prior years, committee disposal of bills (which still need procedural improvement), etc.

It is these last three areas which the authors use as an academic base to build an argument for increasing the professionalization of the staff and the smoother flow of legislation. Other arguments could have been developed, yet the authors have kept to their own disclaimer noted in the preface: ". . . we do not necessarily think that all is well with the legislative system, but our self-designated role is not to suggest reorganizations or reforms. We leave this to others. Possibly our information and data will be helpful to those who do want to revise the process."

In their discussion of the new Constitution and changes in legislative rules, the authors seem to be a bit too optimistic about how these changes will improve legislative performance. Some things are eternal and political infighting and compromise, dealmaking and the pork barrel continue as before. The complete "dance of legislation" is played to a political tune in any state, and in Illinois the keen competition between the political parties, regional, economic and issue-oriented groups can sometimes create more of a dissonant "jam session" than a symphonic consensus.

Often, the legislative staff can be relegated to providing incidental music for the legislators who are playing the tune, and the rules become a melody line to be improvised on by the leading musicians. I don't mean to diminish the role of the staff as a vital component of the legislative process. On the contrary, without such staff expertise, the cacophony of statute content could swell to an even more confusing din, and without the rules, no score would exist for direction by the leadership. Political compromise is an art, not a science, since the human, emotional needs of the legislators and their constituents have as much, and often more, effect on legislative enactment as does the logical development of bill content or procedure.

There are several things this book will not tell you, but then it was not designed to do so. It will tell you how the process works and give you a reliable overview of the structure, which is particularly good for newcomers who have not been intimately involved in the process.□

W. PAUL NEAL, JR.
Manager of the legislative department and chief lobbyist for the Illinois State Chamber of Commerce, he was an editor and reporter covering Congress and federal agencies in Washington, D.C., and state and local governments in California, Michigan and West Virginia.

By GARY ADKINS

Doctors, lawyers, patients, state: Conflicting views of the malpractice problem

The growth in medical malpractice suits in recent years is linked to erosion of doctor-patient relationship, great expectations on the part of patients, opening up the judicial process to increased use of expert witnesses and publicity generated by spectacular jury awards in a few cases

Reprinted from Illinois Issues, February 1976

GARY ADKINS
A graduate of the Public Affairs Reporting Program at Sangamon State University, where he interned for six months with *Illinois Issues* and the *Alton Telegraph*, he is presently a free-lance writer.

THE SKYROCKETING cost and diminishing availability of medical malpractice insurance has emerged as the major health care problem facing the United States in the 1970's. It has spread over the nation like a plague, bringing doctors' strikes in California, threatening health care availability in several other states, and raising patient costs everywhere.

Although Illinois has not been immune to the epidemic of court suits and the consequent spiraling of malpractice insurance rates, the state has fared better than most large states. Illinois physicians may still purchase malpractice insurance without difficulty and at premiums well below those of many other states. Nevertheless, experts in the medical and insurance fields here have long warned of an approaching crisis unless strong measures were taken to avoid it.

As a result of urgings by the Illinois State Medical Society and the Illinois Hospital Association, the General Assembly took a bold first step toward averting such a crisis by adopting two new medical malpractice laws last June. Whether those laws take the correct approach, are constitutional, or will even work is yet to be determined. Controversy swirls around these points like a fire storm.

The problem

Often obscured by the bickering and blame-fixing are the basic reasons for the problem. Those reasons are as varied and fundamental as the human frailties from which they spring, namely, selfishness, carelessness, and incompetency. Specifically, the problem stems from larger and more frequent court awards in patient legal suits against doctors and hospitals. The costs of these expensive court settlements have been borne mainly by health care consumers. Of course the medical insurers are given the original bill. They pass most of it on to doctors and hospitals in the form of higher insurance premiums. To pay these premiums, health care providers pass the costs on to their patients.

Any frank and genuine consideration of this problem will show that no one party is totally at fault, nor is any one party completely blameless. Lawyers, doctors, insurers, and the general public are trapped in an ever increasing cycle of anger, frustration, and even outrage.

Cancerous factors

The growth in the number of suits brought against physicians in recent years (up 57 per cent in Illinois in 1974) is caused by several factors. One is the erosion of the doctor-patient relationship coupled with a patient's growing expectation of "good results." Another is the opening up of the judicial processes to allow for increased availability of expert medical witnesses. A third factor is the publicity generated by the spectacular jury awards which have become more common in recent years, publicity that attracts more complaining patients and highly skilled lawyers to litigation. What do these factors mean?

The undermining of the doctor-patient relationship is seen by some doctors to be a major cause of the trouble. In addition, there has been an increase in medical specialization brought on by burgeoning technology. In conjunction with this, new drugs and new diagnostic and therapeutic methods in combination with increasingly depersonalized institutions have alienated more and more patients. Many physicians and hospitals have become arrogant and dehumanized. Patients must sometimes wait hours for treatment. Others may be separated from friends or relatives unreasonably or even be operated on by "ghost surgeons" whom

'The rapid growth in medical science has unfortunately brought about an attendant risk and uncertainty for doctors using new techniques'

they do not know, instead of a promised surgeon that they do know. Such treatment is often enough to transform slight dissatisfaction into a major malpractice suit.

It is significant to note that patients seldom bring malpractice suits against family physicians or against doctors they have long known. Where a patient is convinced of his physician's genuine concern and sympathy, mistakes are more likely to be forgiven.

Great expectations

In addition to abrasive doctor-patient relations, there is the added problem of great expectations on the part of patients. They not only wish the kind of care they see on *Marcus Welby, M.D.* but the kind of miracle treatment they read about in *Reader's Digest.* The rapid growth in medical science has unfortunately brought about an attendant risk and uncertainty for doctors using new techniques. Along with the ever more complicated medical procedures, there has been an increase in mistakes and misapplications of procedures, and an increase in maladies caused by treatment. Uncertainty also arises because what is routine at one hospital may seem like a *Star Trek* treatment at another. Only very gradually does a new type of therapy become "standard medical practice."

This leads to another reason for the growth in malpractice litigation: the change in courtroom procedures to allow expert witnesses to testify about "standard medical practice." Until about five years ago the unwillingness of physicians to testify against other doctors kept down the number of malpractice suits. Also, the judicial "locality rule" — requiring that doctors be judged by local community medical standards — helped to maintain a status quo by outlawing testimony from outside physicians. As might be expected, local doctors often avoided testifying because of professional retaliation and ostracism. Recently, however, this rule has been overturned to allow the testimony of outside experts familiar with medicine as it is practiced in the defendant's community. Many courts have gone so far as to allow the introduction of pages from medical textbooks as evidence against a physician. Some may even require the defendant himself to testify as a witness for the plaintiff.

A development of equal significance has been the abandonment by some courts of the rule that negligence be proven when an injury clearly resulted from a medical error. This change has allowed plaintiffs to win cases without producing witnesses. Some claim it actually shifts the burden of proof to the defendant who, accordingly, must prove himself blameless.

Known as *res ipsa loquitur*, or "the thing speaks for itself," the legal principle involved is actually a restatement of the ancient rule of circumstantial evidence. It allows patients to display evidence of some medically induced malady to the court as proof of a doctor's failure to observe due care.

A third factor in the rise of the malpractice issue is the publicity given spectacular awards. Before August 1974 there had never been a cash award against an Illinois doctor greater than $250,000; since then there have been two $1 million awards and one $2.5 million award. Juries now seem more willing to give high awards to injured parties who can generate sympathy. Many observers feel that such sympathy is colored by a general resentment against doctors' high incomes and status. Doctors themselves get little jury sympathy since it is assumed that damages will be paid from the supposedly vast reserves of an impersonal insurance firm.

Contingency fees

Big settlements cause part of the problem. One study shows that while only three per cent of all settlements are in excess of $100,000, this three per cent accounts for over 54 per cent of the total premiums paid out. Large awards encourage suits from both the genuinely injured and the fraudulently inspired. Moreover, lawyers have a solid stake in nearly all malpractice cases since plaintiffs usually pay their attorneys on a contingency basis. Under a contingency fee arrangement a plaintiff's attorney is paid a percentage of the court award if successful and nothing for failure. The most common fee is 33 1/3 per cent, but it sometimes goes as high as 40 per cent.

According to a 1973 U.S. Department of Health, Education and Welfare commission report, "no subject in the entire field of medical malpractice has evoked more bitter feelings between physicians and lawyers than the contingent legal fee system under which most malpractice suits are pursued." Lawyers defend the system on the grounds that it allows even the poorest person a chance to have the best legal aid possible in recovering damages caused by physicians. Doctors and insurance officials denounce it. They say it encourages greedy or unprincipled attorneys to seek large awards in nearly all cases whether the facts merit such amounts or not. They add that when the patient is actually entitled to some award the attorney gets a large chunk of it. Finally, insurance officials and doctors contend the system discourages attorneys from accepting cases which would recover relatively small awards since a lawyer's share of the award wouldn't financially justify spending the time and effort to bring suit.

The breakdown

Patients who sue aren't well served by the present system. They do have a chance to get a great amount of money — $4 million was the highest malpractice award ever granted by a jury. However, only 19 per cent of all claims ever reach a trial settlement, and of that number approximately 82 per cent are decided in favor of the defendant. A larger number of all cases are settled out of court. Still, only about 16 cents of every dollar spent for insurance premiums actually reaches the injured plaintiffs who win settlements. The rest of the insurance dollar goes to insurance companies, courts and attorneys.

Insurance companies are sometimes blamed for playing the villain's role in the malpractice chaos. Some doctors claim that insurance firms are raking in excessive profits or misjudging their needed surplus. (A surplus is the estimated amount of premium reserve that will probably be left after all losses and costs have been paid.) The growing number of malpractice suits has made it more difficult for companies to estimate

their needed surplus. About half of all suits filed result in some award for patients, thereby raising insurance rates and the amount necessary to protect companies from insolvency that could result from larger future losses.

The insurance company

Unexpected underwriting losses may not be the only threat to the surpluses. According to industry critics many insurance companies over invested in common stocks during the past two years when the market dipped. A few companies were said to have suffered surplus reductions of over 50 per cent. Such reductions could explain why so many firms have pulled out of the malpractice field in recent years and why those that have remained have not expanded. There were over 20 companies selling medical malpractice insurance in the United States two years ago; there are only about 10 today. Of these only six operate on a national scale. Most insurance firms claim that stock market losses have not been a major factor in increasing rates. Although malpractice premiums are 10 times what they were a decade ago, the companies say they are losing money.

Industry officials insist that it has become almost impossible to accurately price the malpractice market. "The risk is not insurable as the situation exists today," one said. "No company has the vaguest perception of pricing when there is a 20 to 22 per cent annualized inflation in the medical malpractice market. Most of us would like to get out."

Insurers have been suspect, however, since they have been reluctant to come forward with full statistical information to aid in outlining the problem. "The information available with respect to malpractice and related types of insurance is surprisingly incomplete," states the director of the Illinois Department of Insurance, Robert B. Wilcox. Members of the Illinois House Judiciary I Committee apparently agreed with Wilcox when they subpoenaed insurance company records and officials last June while considering malpractice legislation.

The committee then heard the testimony of officials from all the medical insurers in the state, including the largest two, the Hartford and Medical Protective companies. Hartford is in charge of the Illinois State Medical Society's (ISMS) group program covering about 5,500 Illinois physicians. Medical Protective has about 6,000 clients in the state. Together they account for over 90 per cent of the liability insurance coverage of Illinois doctors. The representatives of the firms said they were unable to give the committee full premium and claim information without additional time — time the committee didn't have.

However, in response to direct committee questioning as to whether a contemplated legal ceiling of $500,000 on court awards would help lower insurance rates, no executives answered in the affirmative. William J. Davie, president of the Medical Protective Company, said he would support such a move as "a step in the right direction." Steven Quinlan of the Hartford said he thought such a bill would have "no

immediate effect but might help in the future." The committee also heard testimony stating that only four malpractice cases in the history of Illinois jurisprudence have resulted in awards of $500,000 or more.

Nevertheless, the legislature decided to adopt a bill (S.B. 1024, now P.A. 79-960) containing the $500,000 maximum settlement provision. Since then the Medical Protective Company has criticized the limit. Robert J. Miller, the company's vice president, said the limit may be too high to accomplish its goal and might actually encourage larger suits and verdicts for plaintiffs who consider the upper limit "a magnet."

Another criticism has been leveled by John D. Hayes, a former president of the Illinois Trial Lawyers Association and the attorney for the plaintiff in the largest malpractice settlement in Illinois' history (the $2.5 million award mentioned earlier). Hayes contends that the $500,000 ceiling violates the Illinois Constitution's Bill of Rights. He points out that Article I, section 12 says: "Every person shall find a remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." Hayes says a $500,000 award might not satisfy this constitutional requirement in some circumstances. He seems to be correct in this, for in an initial test of the new law, a Cook County circuit court judge held it unconstitutional in late November.

At the June 19 meeting of the House Judiciary I Committee, Hayes read a statement from the Illinois Trial Lawyers Association opposing legislation putting a ceiling on recovery. "One thing not alluded to by the insurance companies is that the major cause of medical malpractice suits is medical malpractice," he said.

Although most doctors would call Hayes' statement much too strong, many would agree that it touches on part of the problem. Dr. Laurens P. White wrote in the *American Medical News* (March 1975), "We [physicians] have, from sloth and loyalty taken only token action against those physicians who practice negligent medicine, and none against those who accumulate the majority of malpractice suits . . . ."

It is estimated that over 95 per cent of all physicians have never been sued. Yet those in high risk categories, such as plastic surgeons and bone surgeons, are said to face the near certainty of eventual litigation. Excluding these, there still remains, apparently, a tiny minority of doctors who practice incompetently or who act irresponsibly and are never disciplined.

Illinois doctors are licensed by the Department of Registration and Education. This department has done little in the past to police Illinois doctors, even in cases of repeated convictions for gross malpractice, despite the fact the the department is empowered to revoke doctors' licenses. The department is understaffed and overworked (employing about 80 full time investigators), and this has resulted in Illinois ranking last among populous states in disciplining

In addition to $500,000 ceiling on awards (which may not be constitutional), new law sets a five-year limit on filing claims. It also provides for medical review panels to screen malpractice claims. Insurance companies need approval to raise rates

wayward doctors, according to the *Medical World News*. Illinois disciplined only four physicians from 1969 through 1973. In comparison, California, with over twice as many doctors, disciplined 378.

Since Ronald E. Stackler took over as head of the department, it has moved against more doctors. Six doctors were removed from practice in Stackler's first eight months. "The present system, I think, is a bad one," Stackler says. "The fact that someone has a license should no longer be interpreted as a God-given birthright."

While closer attention to licensing might help relieve the malpractice situation by removing incompetent physicians, it won't do away with it. The fact is that many malpractice claims are filed against highly competent physicians. Among those sued in Cook County last year were the deans of two medical schools, the foremost heart transplant surgeon in the Midwest and the heads of over 20 medical departments in teaching hospitals.

The 'long tail' syndrome

Some Illinois doctors are now paying more than $30,000 a year for malpractice insurance, but the average is about $7,116 for a high risk specialist. Four years ago it was $1,388. And while Illinois doctors are not on the brink of losing insurance coverage, some officials say it could happen. State Insurance Director Wilcox says that the market for such insurance is "much less competitive than it was two years ago" but adds that "the odds are against a serious availability problem."

What has Illinois done? Besides the $500,000 ceiling already discussed, S.B. 1024 also attempts to give insurance firms a better opportunity to correctly judge their surpluses. It does so by setting a five-year limitation for filing claims after an injury occurs, or two years after the discovery of such an injury. This is meant to control the "long tail syndrome" which in the past has made Illinois insurance companies responsible for court action brought up to 10 years after an injury, thereby causing immense uncertainty in the estimation of needed surpluses.

Medical review panels

Another thing S.B. 1024 does is to provide for medical review panels to screen malpractice claims. Each panel is to be composed of a judge, a doctor and a lawyer chosen by the plaintiff and the defendant from a standing list of five circuit judges, 20 practicing lawyers and 20 practicing physicians. The panel will hear evidence submitted by both parties under the rules of civil law and will then issue a written opinion as to liability "and, if liability is found, on the issues of fair and just compensation for damages." A patient who is dissatisfied with the panel's ruling could still contest it in court. If both parties accept the ruling, the court may enter a judgment based upon it. It is hoped that the review panel system will reduce the amount of insurance money going for legal fees and court costs (presently, it takes an average of seven years to settle a suit).

A fourth provision of the new law requires that all companies writing malpractice insurance get prior permission before changing rates. This provision is opposed by insurance companies who call it an unreasonable limitation of free enterprise. S.B. 1024 was sponsored by Sen. Bradley M. Glass (R., Northbrook) and handled in the House by Rep. Robert F. McPartlin (D., Chicago).

Another new malpractice law (H.B. 1968, P.A. 79-962) is designed to guarantee availability of malpractice coverage in the future and to prevent the kind of crisis already experienced in New York and California. It establishes a study commission to investigate the availability of insurance and to "recommend to the General Assembly changes to the present medical injury reparations system."

Perhaps more importantly, this law allows for future organization of a temporary joint underwriting association composed of firms licensed to write liability insurance in Illinois if the state director of insurance determines that the voluntary market cannot provide malpractice insurance for all doctors in the state. This is seen as a stopgap measure against disaster. H.B. 1968 was sponsored by Rep. Arthur L. Berman (D., Chicago) and handled in the Senate by Sen. Harold Nudelman (D., Chicago).

Since all these measures contain unproven ideas in a new field of legislation, there are no assurances that they will work. Perhaps more fundamental solutions will be needed. Some of these now being discussed are no-fault injury compensation for patients, abandonment or limitation of the contingency fee system, or the abolition of plaintiff pleas for specific amounts of damages (called *ad damnum*). *Ad damnum* is often blamed by doctors for increasing the size of awards by indicating to juries the severity of the injury. They say involvement in a suit with a $1 million *ad damnum* sometimes labels the doctor "guilty" in the public's mind. Some doctors are requesting to be allowed to file countersuits when a plaintiff's suit fails.

'Claims-made' insurance

Another solution which does not need legislative sanction is the writing of "claims-made" insurance. One of the nation's largest insurance firms, St. Paul, now offers only claims-made policies which are good only for claims entered in the year they are written.

Like other states, Illinois is now entering a crucial period of trial and error in which some solution will be sought to the medical malpractice problem. All citizens have an interest in that solution since it is estimated that more than $1.60 of every $10 paid to physicians goes for malpractice premiums. In addition, insurance costs add $1 to $7 a day to room charges in most Illinois hospitals. And the problem is growing. □

By J. HUISINGA

Workmen's compensation: Recent changes in law mean higher insurance costs for employers

Reprinted from Illinois Issues, June 1976

When a worker is disabled or dies of a work-related illness, the law often makes the employer or his insurance carrier liable. Illinois was considered laggard in this field until 1975 when General Assembly increased benefits and broadened coverage under W.C. and O.D. laws. The Industrial Commission refers claims to arbitrators and hears appeals. Cases may also go to court

J. HUISINGA
J. Huisinga is a free-lance writer residing in Springfield.

WHEN a worker is disabled in Illinois or dies of work-related causes, who pays the benefits and how much are they? Answering these questions has never been easy, but it is especially complicated now. Last year the General Assembly substantially increased these benefits and broadened coverage to include diseases and disabilities caused or aggravated by working conditions.

There are Workmen's Compensation (W.C.) and Occupational Disease (O.D.) laws in each of the 50 states, and Illinois had been considered behind in its programs until 1975 when the General Assembly amended the laws (P.A. 79-79 and P.A. 79-78) to liberalize benefits and increase coverage. These benefits are not paid from state revenues but by employers, usually through insurance. Employer groups throughout the state are criticising the W.C. and O.D. changes because their insurance rates have increased by as much as 50 per cent. In some high-risk categories, insurance is not even available to Illinois employers. Since public employers, such as city governments, municipal hospitals or airport authorities, are also liable for paying benefits to disabled employees, they will face the same higher costs for workmen's compensation insurance as private employers.

Organizations such as the Illinois Chamber of Commerce have alleged that the increased benefits — paid directly by employers or their insurance companies — will ultimately cost the public a great deal. Illinois companies, they claim, will be encouraged to leave Illinois because of the steeper insurance rates the new schedule of benefits will require. Approximately 275 insurance companies who write workmen's compensation claims in the state are proposing a 24.3 per cent rate increase. They will present their testimony to the Department of Insurance at a special hearing on June 1 at 10 a.m. in the Illinois Building at the State Fair Grounds in Springfield. Such an increase is subject to the department's approval.

The Illinois Industrial Commission, which administers the W.C. and O.D. laws, receiving claims and arbitrating disputes between employee claimants and their employers, is one of the state's most obscure official entities. Part of the reason why the commission's function is not well understood by the public is that *all* of its budget ($2,612,000 this year) goes toward administrative costs. It is worth repeating that the commission pays no benefits itself but determines, in effect, whether a worker has a legitimate claim and what size and type of benefit should be paid by the employer or his insurance company.

Private sector pays benefits

Unlike most social benefit programs, the costs of W.C. and O.D. programs have always been borne by the private sector. Workmen's Compensation benefits were one of the earliest forms of social insurance legislation enacted in this country. As early as 1908 the federal government passed such a law for its civilian employees. By 1920 all but six states had enacted W.C. legislation, and at present each state and Puerto Rico have their own laws. Unlike most other types of social insurance programs, state W.C. and O.D. programs operate independently of federal legislation and control.

Before the passage of W.C. laws, an employee injured on the job usually had to file suit in court against his employer and prove negligence to recover damages. The employer could defend himself against the negligence charge by proving that the injury was a normal risk of the work, that a fellow worker was responsible for the injury, or that

The usual attorney's fee is 20 per cent. Several lawyers in this practice are said to earn more than $200,000 per year

the injured worker was responsible because of his own negligence. Even after the first laws were passed, it continued to be considered an adversary proceeding in most jurisdictions, and the burden of proof was on the injured party. Employers could contest the claim by trying to establish that the injury was not really work-related, that it was not really disabling, or that the degree of disability was not as severe as alleged. Although it has become increasingly easy for workers to receive compensation, W.C. and O.D. laws still have their roots in this adversary proceeding, and it is usually necessary for workers to be represented by an attorney in claim proceedings. It is unheard of for employers or insurance companies to show up without legal counsel.

Provisions for insurance

In Illinois an employer may either contract for private insurance coverage or file proof with the Industrial Commission that he can pay any benefits called for under the law and thus be "self-insured." This insurance pays for the periodic cash payments, lump-sum payments, medical services as well as death and funeral benefits provided for by law. These are defined by statute as total, permanent partial, permanent total, specific loss benefits and death compensation.

Temporary total payments are paid when there is a total inability to work for a temporary period of time. State law provides for a three-day waiting period before benefits begin. Prior to the effective date of the amended law (July 1, 1975), the maximum weekly benefit rate was $124.30 for a worker with four or more children, for a maximum of 64 weeks. Compared to the benefits paid by other states, this was a relatively low rate. Under the new law this benefit must equal 66 2/3 per cent of the injured worker's weekly wage, unless it exceeds $410 — in which case 50 per cent of the weekly wage (no limit) is paid during the entire period the person is "temporarily" disabled.

Compensation payments to the survivors of a worker who died in a work-related accident came to a maximum of $34,000 under the old law. Under the 1975 legislation, survivor benefits are 66 2/3 per cent of the employee's weekly wage, or 50 per cent if the wage exceeds $410. These payments can continue for the life of the spouse, or go to children who are students until age 25. The new law also extended coverage to almost every employee in Illinois. The major exceptions are some domestic and part-time farm labor.

Although there is no statutory maximum for temporary total payments, there is a minimum of $102.50 per week except for individuals who earn less than that. For them, the minimum is their average weekly wage. Injured employees under age 16 who are illegally employed at the time of the accident receive an additional 50 per cent. A widow receiving compensation who remarries receives a lump sum payment equal to two years of benefits and relinquishes further rights to compensation. Under certain circumstances the law provides for payments to dependent parents, grandparents, grandchildren or other heirs dependent upon the injured worker.

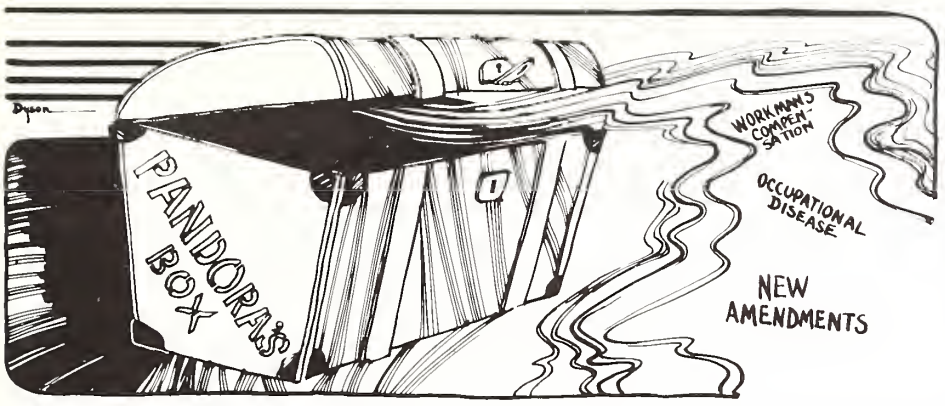
Payments liberal and specific

Compensation for permanent disability and specific losses has also been liberalized under the 1975 amendments. The law contains a schedule for a specific loss payment, that is for loss of, or loss of use of a limb. This section of the law — rather gory reading — calls for 235 weeks of compensation if an arm is amputated below the elbow; if amputated above the elbow the worker gets an additional 15 weeks of compensation; but if it is amputated so close to the shoulder joint that an artificial limb cannot be used, the worker receives an additional 65 weeks. Loss of both hands, both arms, both feet, both legs or both eyes is considered total permanent disability.

There are further complexities. If a worker previously lost one arm in an industrial accident and was compensated for that loss and then later loses another limb in another industrial accident, there is a legal question of who is liable for the permanent disability payments. In this situation the law provides for a second injury fund into which certain employers and certain insurance companies pay a set amount or a certain per cent of an award. From this second injury fund, which is administered by the Industrial Commission, injured workers receive the difference between the current employer's liability and what the law prescribes he should receive. The 1975 law has also had an effect on this second injury fund; it now provides for additional situations in which payments are made to this fund. Beginning in July 1977 payments will be made from the second injury fund to individuals who have been awarded compensation since 1965 as a kind of cost-of-living adjustment. Those still receiving payments on the effective date will receive two checks, one from the state (from the second injury fund) and one from their employer or insurance company.

The 1975 law also liberalizes the medical and rehabilitation benefits payable to an injured worker and now provides that all necessary medical, surgical and hospital services, as well as necessary physical, mental and vocational rehabilitation costs are to be paid by the employer. Critics allege that this and the other changes may have far-reaching implications.

One change that has received much criticism is the new provision for payments to employees who have work-related illnesses. Previously, diseases "to which the general public is exposed outside of the employment" were not subject to compensation. The law previously mentioned silicosis, asbestiosis and radiation disease as occupational diseases, but O.D. claims represented only a very small percentage of



the claims filed. The new law now states that the term occupational disease means "a disease arising out of and in the course of the employment or which has become *aggravated* and *rendered disabling* as a result of the exposure of the employment." Critics allege that this provision opens a Pandora's box, a box filled with employers' money. They point out an individual could work against his doctor's advice, aggravate an existing medical condition, and then collect benefits. If this section is not amended, the commission and the courts will undoubtedly be involved in determining the extent of employer liability in O.D. claims of this type.

Because of the changes made by the 1975 amendments, insurance carriers in Illinois have received permission to increase premium rates by as much as 50 per cent, and some small insurance carriers have withdrawn from offering W.C. insurance in Illinois. The Illinois State Chamber of Commerce issued a news release on February 26, 1976, asking for immediate legislation to correct the "detrimental" effects of last year's amendments. The chamber alleges that the program is headed toward total disaster.

Problems with high-risk

Some employers have been unable to buy insurance protection if they have employees in high-risk categories. The law provides that employers who are refused coverage by three different companies may apply to an assigned risk pool, operated by the Illinois Industrial Commission. Applications for coverage through the assigned risk pool are being received at a record rate, and delays in processing have left employers in a precarious position. In Illinois all but about 800 employers buy insurance coverage from private insurance carriers. The 800 that do not are self-insured, that is, they have established that they can cover their liabilities without carrying insurance.

Employees with W.C. or O.D. claims should notify their employer and also file a claim with the Industrial Commission as soon as possible. If the employee cannot agree with the employer or the insurance company on payments, then the case will be assigned by the commission to an arbitrator. The cases are assigned at random to one of 20 arbitrators — most of them lawyers — hired by the commission. Cases that are appealed beyond the arbitrator's decision go to the commission itself for settlement. Three or more members convene and hear oral arguments.

Since the commission has traditionally been a small agency, concentrating on arbitrating decisions, the compilation of data and the exercising of policing functions have been limited. The commission's office in Chicago is its only office. The commission is only now developing a computer system for complete record keeping. Although it is required that all injuries be reported (40,000 estimated in Illinois last year), the commission estimates that perhaps only 10 per cent of the total were reported.

At present, the commission has no way of knowing if W.C. and O.D. notices are posted by all employers, or if all employers have submitted evidence to the commission that they are insured or self-insured in accordance with the law. There are no records of who has received benefits, for what reason, or in what amount. When the commission pays out the "cost of living" payments from the second injury fund in July of 1977, it will have to rely on insurance companies to tell the commission who should receive the payments.

Attorneys and arbitrators

Of the cases that come before an arbitrator for a hearing, almost 95 per cent have an attorney representing the claimant. An attorney may be awarded a fee of not more than 20 per cent of the settlement for representing an individual before the commission. The fee may be set at less than this amount for less complex cases, if the commission so rules. There are about 120 attorneys in the state who specialize in this practice, and the commission estimates that several earn over $200,000 per year in fees. Most of those who specialize in this field are located in Chicago, and downstate attorneys often refer clients to them.

The majority of the cases filed with the commission do not require arbitration, but about 10,000-15,000 decisions each year are awarded by arbitrators. Thirteen of the arbitrators work exclusively in Chicago and seven work downstate. If either party in a case is not satisfied with the arbitrator's decision, a review may be requested from the commission itself. About 3,000 cases each year go to the commission for determinations. In claims where the State of Illinois is the employer, the decision of the commission is final. In other cases, decisions may be appealed to the courts.

The commission has little in the way

Industrial Commission

Chairman: **Melvin L. Rosenbloom** (resigned in March 1976 but he continues to serve until successor appointed)
Democrat/*representing management:* **Claude E. Whitaker**
Republican/*representing management:* **Leroy E. Duncan**
Democrat/*representing employees:* **Ted Black, Jr.**
Republican/*representing employees:* vacancy
Administrative secretary: **Elsie Kurach**

Commissioners are appointed by the governor with the consent of the Senate to serve overlapping four-year terms expiring on the third Monday in January of odd numbered years. Except for the chairman, the law provides they are to be equally divided between representatives of management (employers) and employees and between the two major political parties; the chairman need not be affiliated with either political party, and he is not to be identified with either employees or employers. The statutes set the chairman's salary at $32,000 and the commissioners at $30,000 each. The secretary and other officers are appointed by the commission; the secretary and arbitrators are paid $25,000 each. The commission has more than 125 employees. Its appropriation for fiscal year 1976 is $2,612,099 (Public Act 79-621).

'If these increased benefits were tied to a tax increase, it is doubtful the bill would have reached the governor'

of policing power, and if a worker finds that his or her employer has not contracted for insurance coverage and is not self-insured, the only recourse is to go to court and try to collect against the employer's assets.

In 1972 the presidentially appointed National Commission on State Workmen's Compensation Laws issued a report stating that the state programs were neither adequate nor equitable. The report offered several guidelines for revamping the programs and commented on the lack of information available from most states. Less than one-third of the states collected any data on the number of workers covered; less than one-half published any data about the amounts of benefits paid — by type of insurance or by type of benefits; and almost none had data on the number of persons currently receiving benefits. The report recommended a uniform information system among states..It also recommended compulsory coverage for all occupational groups, even by employers with only one employee. Regarding benefits, the report recommended a flexible maximum that would adjust to changes in the statewide average wage (adopted by Illinois in 1975). The initial maximum figure suggested by the national commission was equal to 100 per cent of the average statewide wage by 1975 (Illinois exceeded this figure with the 1975 amendments.).

In 1974 a white paper on workers' compensation entitled "A Report on the Need for Reform of State Workers' Compensation" was issued jointly by the U.S. Departments of Labor; Commerce; Health, Education and Welfare; and Housing and Urban Development. Also that year the President established an Interdepartmental Workers' Compensation Task Force. The 1975 Illinois amendments generally brought the state's W.C. and O.D. laws within the guidelines of these federal reports even though the guidelines did not have the force of law. The Illinois State Chamber of Commerce has pointed out that the Illinois legislation went far beyond the federal guidelines.

National estimates indicate that from 1962 to 1972 the dollar cost of the W.C. programs almost tripled and represented expenses equal to 1.12 per cent of covered payroll in 1972. By 1974 it was estimated that W.C. payments increased nationally by 12 per cent over the prior year and that total national payments were $5.7 billion, including $956 million in 1974 for black lung benefits which are federally administered and not part of the state programs. In June 1975 it was estimated that 29,346 individuals in Illinois were receiving federal black lung benefits for a total monthly benefit payment of $4,725,000.

In all but three states the statutory maximum weekly benefit for Workmen's Compensation increased in 1974. In that same year the 10 largest states paid 61 per cent of the total benefits paid in the country. The average cost to employers nationwide was estimated to be $1.24 per $100 of payroll in 1974. Actually, employers spent $7,780 million in 1974 to insure or self-insure their work-injury risks. This estimate was for $5,600 million in premiums paid to private insurance companies, $1,440 million in premiums paid to state insurance funds and about $740 million as the cost of self-insurance. With benefits rising faster than costs, the loss ratio (benefits as a per cent of premiums) for all types of insurance rose from 59.8 per cent to 60.6 per cent in 1974.

Finally, the consumer pays for everything, and these costs will ultimately be borne by each of us. But the 1975 Illinois amendments did not increase state spending directly and were easily adopted. If these increased benefits were tied to a tax increase, it is extremely doubtul that the bill would have reached the governor's desk. If it did, the governor certainly would have vetoed it.

News stories have recently publicized cases where a widow could receive as much as $40,000 per year (tax free) for life. To many, this seems an excessive benefit for someone who was killed at work, especially when an individual disabled in a nonwork-related injury could expect to receive much more modest benefits from Social Security or public aid. In 1965 the Social Security amendments contained a provision which stated that if an individual received both W.C. and Social Security disability benefits, the total from the two sources could not exceed 80 per cent of his average wage before he became disabled. The theory was that an individual might not be interested in being rehabilitated if he had more income when he was disabled than when he was working. Except for the fact that this provision is still a part of the federal Social Security law, the theory seems to have disappeared, at least in Illinois.□

By GARY ADKINS

Welfare's chronic case of frustration

Public Aid

Like King Kong, public aid in Illinois finds itself under attack from many sides. Entangled in a web of rules and regulations of federal programs, the state has little choice but to participate in them in order to receive federal money

Reprinted from Illinois Issues, May 1977

GARY ADKINS
A graduate of the Public Affairs Reporting Program at Sangamon State University, he is the author of a number of articles for *Illinois Issues* on subjects as diverse as Chicago sludge disposal and the medical malpractice crisis.

WELFARE is the second most expensive program area in state spending. This makes it one of the most controversial and least popular. A Harris Survey taken last November revealed that, nationwide, 50 per cent of adults favored cuts in federal welfare spending. Ironically, it is also the program that does more to directly help people than any other. In fact, that is the dilemma: to cut the high cost of public aid risks undercutting the well-being of people, hundreds of thousands of people.

New Gov. Jim Thompson addressed the knotty problem of welfare in his campaign position paper on public aid. While calling the history of Illinois welfare "a sad tale of false hopes, broken dreams, escalating costs and serious waste and fraud," he also spoke out against the "political rhetoric about 'welfare cheaters' and 'free handouts.'" Thompson said, "The system not only places a severe strain on public resources, but it also threatens to lock the poor into an unbreakable poverty cycle that extends for generations." If this is his belief, then what can we expect him to do to reform the system in his short two years? And what will the legislature do?

Thompson's campaign position paper listed five reform ideas. Like most reform ideas they are all rather incremental approaches, that is, they propose small money saving ideas, but no basic changes to the system. Briefly his suggestions include: (1) tightening up procedures for getting federal funds — a persistent problem in light of the maze of federal regulations; (2) cutting down on the number of middle managers in the Illinois Department of Public Aid (IDPA), and giving more field staff less paperwork; (3) implementing a six-point program to eliminate recipient fraud; (4) improving vocational training and job placement; (5) giving greater consideration to recipients' rights.

These suggestions might help; they seem realistic, but will they have any real impact on the enormously large and intricate body of welfare policies and regulations?

To answer this perhaps unanswerable question an uncluttered and basic definition of public aid is needed. What is public aid? Generally, it is a system whereby government provides temporary help (money or services) to poor and needy citizens so that they can become self-reliant taxpayers. It is, finally, a contradictory idea. Public welfare is, at heart, a socialist concept and has always been suspect in a society that claims to be devoted to the ideas of free enterprise and self-improvement.

In Illinois most public aid comes under one of these programs. They are: (1) Aid to Families with Dependent Children (AFDC); (2) Food Stamps; (3) State Supplemental Payment (SSP); (4) Medical Assistance (MA); (5) General Assistance (GA); (6) Aid to the Medically Indigent (AMI); and (7) Social Services, which includes 27 individual programs.

State funds entirely support the State Supplemental Payment program. General Assistance is administered by either townships or commission counties, except Chicago where IDPA administers the program. In areas where state financial participation is required, the state provides 94 per cent of the funding with the other 6 per cent provided by the local governments. The locally administered programs where the appropriate tax levy is not made receive no state funds.

The Food Stamp program is funded entirely by the U.S. Department of Agriculture, but the administrative costs are shared equally between the federal and state government. Both the Medical Assistance and Aid to Families

Why does public aid cost so much? The answer lies in the problem of unemployment, the broad range of social and medical services offered by the state, overlapping responsibilities of agencies and dependence on federal funds

with Dependent Children are funded equally by federal and state money. The group of 27 programs under Social Services is funded with 75 per cent federal and 25 per cent state funds.

Under the Social Security Act, federal funds are disbursed to states having an acceptable state plan for strengthening and improving their programs of Aid to Families with Dependent Children, Medical Assistance, and the provision of social services. The U.S. Department of Health, Education and Welfare (HEW) administers the Social Security Act and grants federal funds to these programs when it determines that state programs are efficiently managed. HEW also establishes regulations for the administration of these programs and withholds funds if states fail to conform with federal regulations. Federal payments are made primarily in the form of matching funds and are paid into the state's General Revenue Fund. The Department of Public Aid's budget, paid from the fund, is appropriated each year by the General Assembly.

Many say the programs are so big now they are out of control. Like King Kong they cannot be improved in nature and should instead be killed. But, so long as the federal programs are in force with their regulations and federal funds, the state has little choice but to participate in them in order to receive federal money.

Reorganization and reform

Another ongoing problem the state must face is this: If we are to have a welfare system, how should it be structured? One solution proposed by the Ogilvie administration in 1966, but never enacted, was to consolidate all state health and welfare agencies under a single department. Under the plan, the departments of Children and Family Services, Public Aid, Public Health, Mental Health, as well as the Board of Vocational Education and Rehabilitation, the Youth Commission, and the Division of Services for Crippled Children, would all become part of a "little HEW." It was argued that such restructuring would reduce overlapping responsibilities and end conflicting actions between agencies. The Thompson administration is also discussing various reforms of the welfare structure, but no specific reorganization has been recommended at this time.

At present the IDPA is involved in multi-agency responsibilities. Sometimes one agency is making placements at a home at the same time that another agency is trying to remove the same patients. IDPA has the extra condition (they deny it is a problem) of not having the power to remove patients from a home. The *Chicago Tribune* referred to this as a serious deficiency for a department that makes payments for 17,000 former patients of mental hospitals, and 19,663 foster children (most of whom, by the way, are primarily the responsibility of either the Department of Children and Family Services, or the Department of Corrections).

Some of this confusion was eliminated by meetings of the so-called health cabinet, set up by then Gov. Walker and composed of the directors of all the health and welfare agencies of the state. Because of these meetings, the people at the top — at least — were occasionally working together on mutual problems, and solving some. Gov. Thompson is continuing with this concept.

Aside from structural changes, another welfare improvement that has been often discussed is to make more people on welfare work for their money. This is a popular solution with many, but not a comprehensive one, since most people on welfare are children and old and disabled people. Only 12.4 per cent of people on welfare in Illinois are classified as employable. In the general assistance program the rate is much higher: 70 per cent are classified as employable. To that extent, then, the public aid load is a result of unemployment. Aside from the unemployment problem, welfare must support mothers not working but with children to support, the blind, disabled, and old people. Most of these are dependent upon it for their very lives. How do you cut off or reduce funds to these people after once making a commitment to them?

Heavy welfare spending is likely to be with us for some time to come. "Over 10 per cent of the population of Illinois, approximately 1,230,000 persons, are receiving some kind of public assistance," according to Walker's accountability budget for fiscal year 1977. The state's bill for public aid for fiscal 1977 will be close to $2 billion (see table 1). An appropriation of $1,986,296,763 passed both houses of the General Assembly, and was approved with a $3.4 million cut by the governor on July 12 last year, but the legislature overrode the veto and restored the cut. Prior to the veto the House had lopped off over $11 million requested by IDPA for new administrative staff and added contractual services. Specifically, funding for 1,091 new staff was eliminated.

The federal share of welfare costs

Approximately 50 per cent of the state's aid costs are paid by the federal government. In addition, many communities of the state don't receive state money for local public aid expense, and their costs are thus excluded from the total public aid bill for Illinois. Why does public assistance cost so much? What does the money buy? The answer lies in the broad range of social and medical services, as well as outright public welfare grants, offered by IDPA.

The Aid to Families with Dependent Children program aims at "strengthening family life" by providing grants, comprehensive medical care and social services to families in need. Those eligible are families with children who have been deprived of parental support or care by death, disability or continued absence from the home (AFDC), or by unemployment (AFDC-U). To apply, a family must have one or more children living at home who are under age 18, or

under 21, if regularly attending an accredited school or college. In setting the amount of assistance due a family, IDPA considers the economic section of Illinois the family resides in (counties are officially classed into three sections for this purpose) and the number of children in the family.

For the first time in 10 years, there was a net drop in the caseload in 1976 for the Illinois Aid to Families with Dependent Children. As of last November there were approximately 772,039 people collecting AFDC payments in the state, over 30,000 fewer than in February of 1975. It may be that this caseload decrease was largely due to the reassignment of the more experienced staff in IDPA to "intake" positions (making critical initial eligibility decisions).

Social Services programs have been offered since October 1975 under a plan which ends June 30. Hearings are being held to determine how to continue the programs after June 30. Some of these social services include: day care for children, housekeeping or homemaking needed because of illness or incapacity, developmental and social adjustment help, family planning advice, housing improvement services, protective services for children, necessary transportation, literacy training, vocational and adult education, and other needed support help.

Most of these services are provided by a state agency, and payments are not made to an individual but to the agency providing the service. Persons receiving AFDC, SSP or the federal Supplemental Security Income and others who are "income eligible" qualify for these programs administered by the Illinois Department of Public Aid.

As of June 1976, 565,240 of the 788,244 persons getting AFDC were children. About 88 per cent of all those children were in the care of their mother and 30.2 per cent were under five years of age. The median age, in fact, for children receiving AFDC is 8.5 years.

Far more encouraging and surprising than this is the fact that the median time that an AFDC family receives welfare is less than three years. This fact undercuts the widespread belief — repeated by Thompson in his position paper last September — that many families remain on welfare for generations. When this is considered along with the high number of children involved, it also points up the necessity for this kind of welfare, even to those most opposed to "big government giveaways."

Medical Assistance most costly

Medical Assistance (commonly referred to as Medicaid), a federal-state program subsidizing health care for the poor, has been accepted since its inception by nearly one of every five Americans. Illinois' Medicaid program is "one of the most comprehensive in the nation," according to the state's fiscal 1977 budget book. It is also the single most expensive welfare program in Illinois and certainly the most fraud-ridden and abused.

IDPA's Medical Assistance program offers comprehensive medical services to AFDC recipients and persons on the federal Supplemental Security Income (SSI) program who qualify. This assistance also goes to other low income families with minor children and aged, blind, or disabled individuals who do not receive cash assistance, if their medical bills exceed their ability to meet payment and their assets meet state standards. This category of the program is called Medical-Assistance-No Grant (MA-NG). In 1975 over 800,000 people a month received Medical Assistance. Of these, about 31 per cent received only medical care, while the other 69 per cent were already receiving some form of aid from other welfare programs.

In fiscal year 1976 IDPA spent about $868 million for MA, and will spend an estimated $912 million in fiscal 1977. During calendar year 1975 the program supported a monthly average of 42,667 patients in nursing homes and provided 2.7 million days of hospital services, 13 million services of physicians, dentists, etc. In addition, it footed the bill for 14.7 million drug prescriptions, helped pay for in-patient hospital mental care for 855 people (at $11.5 million), and facilitated medical care for an average of 19,663 foster care children per month (costing $6.1 million).

A number of drawbacks go along with these services, not the least of which is the apparent high incidence of fraud in the program. In April of 1975 the U.S. Comptroller General's Office issued a 45-page report on the Illinois Medicaid program. The report criticized IDPA for failing to combat widespread fraud, especially by medical care providers. In March of 1974 the *Chicago Tribune* disclosed that 70 Illinois doctors collected together over $10 million in a single year for treating welfare patients in an assemblyline fashion. And in 1975 U.S. Senate investigators estimated that up to $60 million a year was being paid illegally from Illinois Medicaid funds. Despite this, IDPA had referred only 22 fraud cases to the state's attorney office for prosecution.

But IDPA has recently made a strong effort to reduce abuse by Medicaid recipients and providers. On September 29, 1976, 16 medical providers were indicted by a federal grand jury as a result of a 14-month investigation. As of December 1976, IDPA had suspended 125 health care providers from participation in Medicaid, and 38 have been terminated from the program. Medical audits and review boards are being used against fraud. In addition, a new, automated Medicaid Management Information System (MMIS) is being planned to help process claims faster for all medical aid providers to clients. It may take a year or two before this new system is operative.

Despite all this, fraud will continue to some extent and will remain a basic issue in the controversy over the advisability of welfare spending in pursuit of social justice. The basic question for political and social planners during the

Table 1. Illinois Department of Public Aid Budget, Fiscal Year 1977

	Original fiscal 1977 request	Passed by House	Passed by Senate	Approved by Governor
Total Distributive	$1,827,169,000	$1,830,569,000[1]	$1,830,569,000	$1,827,169,000[4]
Total Medical	912,000,000	912,000,000	912,000,000	912,000,000
Total Administrative	166,943,400	155,195,760[2]	155,727,760[3]	155,727,760

[1] $3.4 million added by House floor amendment for Illinois Office of Education (IOE) Adult Education.
[2] Reductions totaling $11,747,640 requested for new staff and contractual services.
[3] $532,000 restored for EDP contractual services.
[4] The governor reduced the appropriation for IOE Adult Education from $5.4 million to $2.0 million for a total reduction of $3.4 million, but the legislature overrode the governor's cuts in Adult Education.
Source: Illinois Department of Public Aid.

The department has weeded out ineligibles and cracked down on overpayments, but the state is still not up to federal standards

next decade will be this: To what extent are we willing to tolerate waste in an effort to provide each citizen with adequate health care? Should government even be involved in health care?

SSP least expensive

Largely exempt from this sort of basic philosophical debate will probably be the State Supplemental Payment (SSP) program. It is a relatively small, noncontroversial area of welfare spending, which grants living expenses to those who are poor and aged, blind or physically handicapped. It is inexpensive because, as of January 1974, the federal government assumed most of the cost for grants to this group under the Supplemental Security Income (SSI), which is entirely administered by the federal Social Security Administration program. SSI provides maximum cash grants of $167.80 per month to a recipient living alone. The state supplements this if an SSI recipient's cash assets are below $400 for an individual or $600 for a couple.

SSI recipients may also qualify for medical assistance, food stamps, and social services. Social services include shopping, reading or guide service for recreation, repair of Braille writers, radios, and typewriters, guide dog allowances, transportation, and many other kinds of help.

SSP is a small program. It affects a total of about 45,000 people, but costs the state "only" about $35 million a year — an average of about $750 per person. Of those now on the program about 35,000 are disabled, 9,500 are aged, and 750 are blind. Three years ago, before the start of the federal SSI, there were about 86,000 disabled, 31,000 aged and 1,700 blind on state SSP, and the yearly cost was three times higher than now.

General Assistance

General Assistance (GA) is one Illinois welfare program that receives no federal funds but is instead paid for with state and local funds. In Chicago, the city pays only about 8 per cent of the GA cost, and the state picks up the rest. GA, in fact, is pretty much a Chicago program paid for by the whole state. Many other areas absorb the full cost. In fact, only 42 local governments request GA payments, out of 1,455 governments statewide.

GA is available to those who aren't eligible for federal welfare, but who, nonetheless, need income maintenance to purchase the necessities of life. As such, it is one of the most controversial areas of public spending in Illinois. Ninety-one per cent of GA payments are made in Cook County, a fact strongly resented by much of the rest of the state, resentment often voiced by downstate legislators at appropriation bill hearings in the General Assembly. Many downstate local officials would like to see GA made a mandatory program, fully funded by the state — but when there is talk of state and local cost sharing, they are horrified.

Food Stamp program

In response to downstate agitation, IDPA reviewed all GA cases in Chicago during the last fiscal year and promised to pursue a policy of redetermining every case three times a year. But with an annual budget of $120 million, even that can hardly be expected to quiet critics armed with the knowledge that over 70 per cent of those on GA are considered employable. (Of 61,270 recipients, 45,960 were classed as employable in May of last year.)

All GA recipients are required to register for work and to take most jobs offered them, or risk losing all benefits. Unfortunately, a large number of "employables" are really unqualified for most kinds of skilled labor.

Table 2. Growth of Illinois public aid programs

Number of public aid recipients in Illinois and amount of assistance by program for the month of September of each year, 1965 through 1976

(Medical amounts for persons who receive a grant for Aid to Aged, Blind or Disabled or for Aid to Dependent Children are not shown in the table. Medical amounts are included for persons receiving General Assistance.)

	Aid to Aged (OAA)		Aid to Blind (BA)		Aid to Disabled (DA)		Dependent Children (ADC)		General Assistance (GA)		Medical Only**	
SEPT.	Persons	Dollar Amount	Persons	Dollar Amount	Persons	Dollar Amount	Persons	Dollar Amount	Persons	Dollar Amount	Persons	Dollar Amount
1976†	9,516	$ 567,595	782	$ 51,678	34,913	$2,369,684	776,782	$60,766,095	66,295	$14,821,855	180,137	$25,231,997
1975†	11,138	757,168	846	54,696	37,560	2,645,519	800,875	62,856,398	66,993	13,442,280	169,206	19,129,236
1974†	5,145	207,512	633	27,275	10,399	423,046	755,747	53,707,431	56,384	10,373,369	191,001*	16,983,344
1973	31,304	2,120,395	1,693	186,764	86,835	9,342,505	770,764	48,736,267	52,713	7,589,552	120,182	15,922,026
1972	34,312	2,275,658	1,731	178,261	83,467	8,726,584	736,769	44,615,355	44,390	6,473,249	113,050	9,769,422
1971	34,310	2,084,500	1,698	162,902	63,547	6,090,100	642,551	37,894,300	63,452	8,951,600	97,569	13,147,429
1970	34,757	2,087,916	1,654	150,470	43,211	3,816,603	437,951	24,623,410	74,261	7,697,232	86,454	9,272,743
1969	37,692	2,714,865	1,707	157,745	37,857	3,556,979	344,341	17,076,397	51,125	4,143,423	77,226	7,455,025
1968	37,539	2,272,858	1,765	141,213	34,141	2,836,699	303,163	13,705,661	49,998	4,114,501	68,193	5,954,794
1967	38,826	2,361,323	1,867	143,608	30,926	2,422,567	263,764	11,279,634	47,498	3,063,971	62,022	2,822,768
1966	42,593	2,412,643	2,048	142,733	29,568	2,207,432	247,822	10,009,129	37,989	2,479,227	31,123	2,299,944
1965	54,247	2,447,039	2,373	147,572	30,572	2,045,582	257,347	9,699,622	42,607	2,718,434	3,690	1,969,367

†*SSI Program in 1974, 1975, and 1976; Aid to the Aged, Blind, or Disabled figures for 1974 do not include persons receiving a state supplement through the federal Supplemental Security Income (SSI).*

**Contains approximately 24,000 persons receiving State Supplement through SSI; 1975 "medical only" persons does not contain these persons.*

***Does not include medical amounts for persons who receive a OAA, BA, DA or ADC grant. GA does include medical.*

Source: Illinois Department of Public Aid.

Administration of the Food Stamp program will cost the state of Illinois about $5.5 million in fiscal 1977; the federal government will provide another $5.5 million for administration of the program in the state. The federal government will allot an additional $240 million for the food stamps themselves. Recipients will pay another $216 million for a total of $456 million worth of food coupons sold here.

About one million poor people are on food stamps in Illinois — out of about 20 million nationwide. The food-buying power of recipients is increased by the stamps, the amount depending upon family size and income. Most of those getting food stamps also receive other forms of public aid, but 20 per cent do not. Over two-thirds of state food stamp recipients live in Cook County.

The program is under attack from many sides nationally. It costs the United States about $6 billion a year and is said to be a major target of abuse for "welfare cheaters." Critics have also charged that some families earning as much as $16,000 a year have nonetheless gotten on the rolls. To be fair, it is a difficult program to administer because of complex and confused regulations. There is strong sentiment in Congress to revise or eliminate the program.

IDPA now has about 9,700 employees. Of this total, 6,561 are field staff caseworkers, 379 are support staff and 2,763 are central and regional administrative staff, or are involved with electronic data processing, medical services, social services, food stamp administration, or child support enforcement. Support enforcement collects money from absent parents who are legally and financially responsible for child support. The department collects $1.25 million monthly with the help of the Attorney General's Office.

The administration of IDPA has two headquarter offices, one in Springfield and another in Chicago. There are four regional offices in Cook County and four downstate, 101 downstate county offices, 23 Cook County district offices, and a number of special service offices in Chicago.

Table 3. Total program growth

	Total All Programs	
SEPT	Persons	Dollar Amount
1976†	1,068,425	$103,817,904
1975†	1,086,618	98,885,297
1974†	1,019,309	81,721,977
1973	1,063,491	83,897,503
1972	1,013,719	71,738,529
1971	903,127	68,330,831
1970	678,288	45,830,656
1969	549,948	35,104,434
1968	494,799	26,475,726
1967	444,903	22,093,871
1966	391,143	19,551,141
1965	390,836	17,012,606

† SSI Program in 1974, 1975, and 1976; Aid to the Aged, Blind, or Disabled figures for 1974 do not include persons receiving a state supplement through the federal Supplemental Security Income (SSI).

Administrative improvements

In January 1974 the Cook County Department of Public Aid was legally (Public Act 78-363) incorporated into IDPA, but it took a full year before actual consolidation was complete. Thus ended 42 years of separate administration of two Illinois public aid agencies, a separation which had created havoc in the bureaucracy.

Early in 1975 new manuals were completed for AFDC and SSP. The new books replaced a 23-year-old, two-foot-thick hodge-podge of outdated memos and bulletins. Whether these manuals will materially assist caseworkers in their day-to-day work is not clear.

Caseworker accountability was instrumental, according to the department, in detecting and eliminating ineligible and overpaid cases. Income verification was one means of doing this. Another was through field staff use of lists identifying categories of clients most likely to be ineligible for aid.

In a massive effort to eliminate ineligibles, IDPA began a redetermination project in 1975. It affected all AFDC and GA recipients, along with all MA-NG recipients. By visiting every home, caseworkers verified the eligibility of all recipients — a Herculean task. Cancellation of 21,794 cases resulted from the initial project, and a second one brought cancellation of 20,676 more cases.

Due to these massive efforts, only 4 per cent of the department's AFDC caseload were found ineligible, and 5.3 per cent were overpaid during the last six months of 1976. Federal tolerance levels stand at 3 per cent for ineligibles and 5 per cent for overpayments.□

Reprinted from
Illinois Issues, May 1977

By ROY WEHRLE

Paperpushers or people servers

The caseworker

WELFARE can help people in dire need; welfare can hurt people by destroying hope and self-esteem and leaving them in a cage of dependency. Help or hurt, it all depends on how the instrument of welfare is used. The caseworkers whom government employs to handle this instrument have the potential to help many families to self sufficiency, but the limited field of action and responsibility given to caseworkers has seriously hampered this possibility. Like the factory worker with the wit and will but not the opportunity to do things a better way, the caseworker is often frustrated.

It is not just a coincidence that bureaucracies and factories operate in a similar fashion. Both seek efficiency through division of labor and rationalization based on the scientific method. Bureaucracy is social and administrative science in action. Because of its commitment to explanation, science seldom considers its object of study as a whole, be it the moon or a society. Rather, the object is broken into small pieces or functions which are analyzed in terms of action and behavior — density, velocity, chemical reactions, and so on. Bureaucracies function in much the same way. Functional tasks are defined, organized and then managed within bureaucracies. Every unit has its own important but limited task.

For example, the legislature directs the executive branch of government to provide specific kinds of assistance to particular groups of people. Services and people are cut up into standardized pieces, and officials are assigned to manage the parts so that the law is carried out. Depersonalization is not just a fancy word, it is the reality. No longer does the scientist remember that the wave length of 14 millimeters is the violet of a rainbow. Nor does the caseworker know that the referral case of a 12-year-old male subject with hyperactivity and a police record is the son of Mrs. James Doe and that she and he are both a very special part of the rainbow of life. The desire to see life whole rather than in pieces is not just romantic longing. It also results from the recognition that specialization may be efficient in a narrow, cost-benefit sense, but in the long run it can be terribly costly and detrimental to people helped and people taxed.

ROY WEHRLE
A professor of economics and public affairs at Sangamon State University, he previously served on the President's Council of Economic Advisors and with the U.S. Department of State in Laos and Vietnam.

As Gary Adkins points out in his accompanying article, the complexity and magnitude of the welfare programs in Illinois are beyond easy comprehension. The problems of these programs are myriad, and simple solutions do not exist. Welfare complexities and costs are to a large extent a reflection of the social costs created by a technological society and its obsession with efficiency and comfort and things. This situation will not quickly change.

The caseworker is the personal link between the individual in need and the world of bureaucracy, regulations and assistance. The caseworker plays a crucial role in shaping the expectations and hopes of the person in need. There are approximately 4,500 caseworkers working for the Illinois Department of Public Aid (IDPA). A caseworker oversees an average of $390,000 of welfare payments each year for an average of 645 recipients. Some caseworkers determine eligibility for people who request assistance; others are responsible for the continuing checks to ensure that recipients remain eligible for assistance, while still others work with people receiving food stamps and those eligible for Medicaid. Still others, classed as services caseworkers, seek ways to obtain social services such as day care, counseling, etc. Workers in the Department of Labor are charged with obtaining job training and finding jobs for recipients under the Work Incentive Program (WIN). Back in the 1950's all of these functions were under the single umbrella of IDPA, and a single caseworker managed all aspects of helping and checking for a recipient. Today things are different. Generally, caseworkers are functionally specialized by type of welfare assistance. In some instances, a single caseworker may oversee two or three kinds of aid for a recipient or family, but no one caseworker ever oversees continuing eligibility, services, training and job placement for a person or family.

What is life like for the recipient who has several casework managers and doesn't always know which one to contact? What is life like for the caseworker who feels like an assembly line worker?

A caseworker today, particularly in the urban areas, seldom knows recipients as individuals or as part of a family or as members of a community. The caseworker sees income reports, Medicaid reports and day care requests. The people and the parts of their lives the caseworker sees come and go in a whirl of paper. The caseworker cannot know or feel responsible for what happens to most recipients.

There are several reasons for this change to specialized caseworkers "responsible" for many recipients. First, the number of recipients has increased much faster than the number of caseworkers employed by the department. As a result each caseworker now has supervision over a very large number of recipients and families, ranging from

approximately 540 people per Aid to Families with Dependent Children caseworker, to 750 people per service caseworker (not all of whom need help), to 400 people per Supplemental Security Income caseworker. It is not possible to know, much less to periodically visit, this number of people. Second, as the regulations increase in size and complexity over the years, caseworkers have found it more and more difficult to master the "regs" over more than a narrow area. Third, it is argued that if the caseworker "function" is narrowed in scope, it becomes a technical job. Then a less qualified person can be employed, and the state will save money.

Finally, the content of the caseworker's job is now defined in terms of process, not end result. The caseworker is not expected to oversee the steps a person or family take toward self-reliance; that is, help, challenge, cajole and raise their hopes to assist them to independence without welfare assistance, or to better health, or to better functioning, or whatever is a practical goal for a person or family. Rather, the caseworker is expected only to do the specialized job of overseeing a particular part of the recipient's life: processing requests for day care or overseeing Medicaid use.

Specialization is the technological answer to the need for lower costs, in welfare as in factory production. Specialization is also an answer to complexity, for the caseworker if not for the recipient. Specialization seems obvious, efficient, and at worst, unavoidable. Yet this narrowing of caseworkers' functions and responsibility represents a slow slide toward treating people as objects, toward allowing those who are able to work to adjust to becoming wards of the state, toward not helping people to live. In this situation no one is really responsible for salvaging human lives. Caseworkers do their jobs, but they are not responsible for a person or for an outcome.

Few caseworkers in Chicago or East St. Louis receive the satisfaction of seeing a family they have helped make it on their own, or alternatively the dissatisfaction of seeing a family that seemed to be making progress fall apart. The rewards for caseworkers who want to help people should come from trying to build-in the grit and self-esteem and hope that can make a difference in recipients' lives. Today there are few such satisfactions or challenges for the caseworker. Yet it is the hope of helping that originally attracted many caseworkers to this tough line of work. Not finding it, many in past years quit after a short time. Now jobs are more difficult to find and caseworkers stay on, though often hampered and frustrated from accomplishing all they could accomplish under a more flexible system.

At present IDPA has no strategy for making effective use of caseworkers to help recipients attain financial independence. To be sure, financial and medical help are provided and this is no small help, especially to people in dire need. But if individuals are not boosted toward independence, help soon becomes the hurt of continuing dependency and loss of self-esteem. The result is second-class citizenship.

If the present system of assembly line caseworkers is not a good way of helping people, what can be done about it? The overall objective should be self-reliance for those persons and families where this is a possibility. If unemployment is high, this goal is not generally attainable. To move in this direction two changes are required.

First, more caseworkers would have to be hired. This would be costly, but a dime spent now might save a dollar of assistance payments in the future. But the budget is tight, and who will speak in favor of employing more bureaucrats! Second, caseworkers should be given broad responsibility for a reduced number of recipients. These caseworkers would have to be well-informed on eligibility, available services, job training and job opportunities.

Would HEW let Illinois return to a comprehensive services package for individual recipients under the supervision of a single caseworker? HEW led the way during the last decade in encouraging specialization of caseworkers. Now, Congress has changed the law and specialized caseworkers are no longer required. HEW, however, is not trumpeting this change across the land. Yet federal law still stipulates that job training and placement are to be provided by the Department of Labor. Changing this seems improbable until one notes that President Carter has declared that states should be given an opportunity to find better ways of meeting needs. Existing ways, he said, are not always the best ways. Will the present caseworker specialization achieve the President's goal? The answer is a resounding no. Too often, it may be added, state welfare programs follow meekly in the train of HEW pipers in Washington.

There are a few signs of change. Several officials of IDPA are beginning to believe that caseworker specialization has gone too far, reducing their effectiveness to help recipients and stultifying morale. A pilot program has been prepared for the new director, Arthur Quern, which would reintegrate IDPA's welfare aid under a single caseworker. Even if this were carried out across the state, the vital functions of job training and finding jobs would still be the responsibility of different officials with different knowledge and interests in the Department of Labor.

Welfare assistance is a dangerous instrument in another way. It causes communities, neighborhoods and relatives to disregard people in need because "welfare will take care of them." This distorted perception undercuts community responsibility. Family and community concern is the essential, if invisible, cohesion of our society. Sociologists call this the integrative function. Welfare assistance can sunder this integrative function, leaving the individual vulnerable and bereft of community support.

Jesse Jackson, director of Chicago's "Operation Push," is right when he says that parents who do not help their children with schoolwork have no business complaining about schools or teachers. Without responsible parents, schools can accomplish very little. And communities that are implicitly instructed by the state not to take care of their own, soon become communities in name only. Caseworkers, if they felt responsible and had departmental support, could build alliances with local church, civic and business groups to provide help, training and jobs for people in need.

Caseworkers should be the personal link between the necessarily impersonal state regulations and the individual needs of people. They should display the concern and creativity to help people become a part of a community and to find self reliance through work wherever possible. This is a worthy challenge for Director Quern and Gov. James Thompson.□

By CRAIG SANDERS

OSHA in Illinois: The agony and the ecstasy

Reprinted from Illinois Issues, October 1976

Created by the U.S. Congress in 1970, the Occupational Safety and Health Administration was established to provide jobs that are 'free from recognized physical harm.' Since its inception in Illinois in 1973, OSHA has been criticized by both labor and management. Labor feels it is underfunded. Management would like more consulting services

CRAIG SANDERS
Receiving the master's degree in political science at Sangamon State University in June, he worked in the Legislative Staff Internship Program where he served with the Senate Republicans.

FEW FEDERAL regulatory agencies have provoked as much furor in the business establishment and raised as many scare stories as the Occupational Health and Safety Administration (OSHA). With its approximately 4,400 standards, most of which are extremely detailed, OSHA often conjures up visions of hard-headed OSHA inspectors making surprise visits and nitpicking employers about such minor irregularities as the height from the floor of fire extinguishers. It is also widely believed that an OSHA inspector can shut down an entire job site on the spot for a single violation of the OSHA standards.

OSHA has been lambasted by labor for being too weak in its enforcement policies, and criticized by industry for being too stringent. The truth, as usual, probably lies somewhere in the middle.

OSHA inspectors are required by law to make unannounced inspections, but they do not have the power to shut down a job site during the course of an inspection. OSHA can advise both employees and employers that work conditions constitute an imminent danger of serious injury or death, and if steps are not taken to abate these dangers, the agency can seek court action to close the site. But to date, this has never happened in Illinois, and it is a rare occurrence elsewhere in the United States.

The Occupational Safety and Health Act was passed by Congress in 1970 in response to what seemed an alarmingly high industrial accident and death rate, a rate that the House Labor Committee said showed "no signs of changing." Indeed, a full three per cent of the employed civilian work force were injured seriously enough each year to require sick leave. At the time that OSHA was passed, the cost to industry amounted to 100,000 man-years of production annually. The manufacturing injury rate had risen from 11.1 hours of lost time per million man-hours in 1957 to 15.2 by 1970. It was also estimated that only 25 per cent of workers exposed to health hazards were adequately protected and that 390,000 new cases of occupational disease arose each year. In 1970, one doctor testified that asbestosis (the scarring of the lungs by asbestos dust), a disease that doctors "knew well 40 years ago, is still with us just as if nothing was ever known." Congress also felt that existing state legislation designed to promote worker safety was generally weak, or not well enforced. And the variations in safety requirements from state to state tended to penalize those states whose concern for safety was strongest. Congress passed the occupational safety and health legislation by overwhelming margins in both houses.

Safety and health standards

The act was designed to provide approximately 57 million employees of about 4.1 million employers with jobs which are "free from recognized physical harm." The act, which took effect on April 28, 1971, covered all U.S. workers except those employed by federal, state and local governments. OSHA itself was set up under the Department of Labor. The secretary of labor was directed to establish and enforce safety and health standards. The National Institute of Occupational Safety and Health (NIOSHA) was set up under the Department of Health, Education and Welfare to conduct research on occupational health and safety. Some 4,400 interim standards were established, and the secretary of labor was empowered to issue additional standards when necessary. But public hearings must be held on the new standards and consideration must be given to (1) the feasibility of the

standards, (2) the latest scientific evidence, and (3) previous experience under other laws. In its first four years of operation OSHA promulgated only four major new standards. The secretary can also implement temporary standards to protect employees who are exposed to "grave danger." These temporary standards, however, can only remain in force for a maximum of six months; the procedures for regular standards must be followed in order to extend or make them permanent. OSHA regulations are found in the U.S. Code of Federal Regulations, Title 29 (approx. 800 pages).

Variances and violations

An employer may seek a permanent variance from a standard, but only after an inspection and a hearing which his employees may attend. To be granted a variance, the employer must establish clearly that working conditions are as safe and healthful as required by the normal standards. An employer can also seek a temporary variance after a hearing if it can be shown that compliance with the standard by its effective date is impossible because of labor or material shortages. Employers must also demonstrate that all available steps to safeguard employees against the hazard covered by the standards have been taken, and that compliance will be effected as soon as possible. A temporary variance, including extensions, cannot last more than two years, and the economic impact of compliance cannot be considered in the decision to grant a temporary variance, according to the Senate Report on Occupational Safety and Health Act of 1970.

OSHA's standards are purposely specific and diverse. For example, there are some 140 regulations pertaining to wooden stepladders. Of its some 4,400 standards, 2,100 apply to all industries with the balance applying to construction and maritime industries. When inspections (always unannounced) reveal a violation, the employer is cited, ordered to abate the condition within a certain time period, and may be fined. Serious violations, those which create substantial probability of death or serious injury, can result in a fine of up to $1,000 for each violation. Willful or repeated violations may result in a civil penalty of $10,000 for each violation, and failure to correct a violation during the abatement period may result in a fine of $1,000 per day. The only criminal penalties provided are for willful violations that lead to the death of an employee which can subject an employer to a fine up to $10,000 and a jail sentence of six months. Despite these penalties, the average penalty per violation during OSHA's first six months of operation was about $25.

An employer may appeal a citation to the Occupational Safety and Health Review Commission, a three-member body appointed by the President. From there an employer can appeal to the Federal Court of Appeals. Of the some 9,130 cases decided by the end of 1974, the Review Commission allowed the employer more time to abate a violation in 90 per cent of the cases.

Under the OSHA act states were permitted to adopt their own safety and health programs and standards as long as the state designated an agency to administer the program, gave the agency sufficient legal authority, and funded the program to enforce standards that were "at least as effective" as the federal standards. In writing this provision Congress intended to provide those "safety conscious" states with the opportunity to maintain their current programs and perhaps even set up standards more stringent than the federal standards.

But in Illinois, as in many other states, living up to the federal standards has not been easy. Shortly after the OSHA act was signed into law, the Illinois Labor Laws Study Commission recommended substantial changes in respect to the state's occupational safety and health program. For years the Illinois Department of Labor and the Industrial Commission had been enforcing the state's own Health and Safety Act of 1936 which required inspections and safety standards to be promulgated by the Illinois Industrial Commission. The study commission recommended removing the Industrial Commission from the picture, but both labor and management were opposed, so the recommendations of the commission were never adopted.

The Illinois OSHA

Gov. Richard B. Ogilvie instead, in 1971, designated both the state Department of Labor and the Industrial Commission to receive funds for the promulgation and enforcement of standards in order to bring about Illinois' compliance with OSHA. For the interim period, the state submitted an application to the U.S. Department of Labor for a section 18(h) agreement to allow the state to enforce its own standards while a state plan was developed to comply with OSHA. This was granted and later that year the state received a planning grant of $290,516 from the Federal Department of Labor to develop its plan. The Department of Labor encouraged all states to develop their own plans, in the belief that states would be more responsive to their own problems. The idea was that if the state programs worked out, then federal involvement would be reduced.

Illinois also agreed with the U.S. Department of Labor to assist the federal inspectors in inspection visits to target industries. In December 1971 the state submitted a letter of intent to OSHA agreeing to submit its state plan within six months. In the meantime, legislation was passed by the General Assembly (P.A. 77-1644) to amend the Health and Safety Act of 1936 to provide unrestricted authority for the Illinois Industrial Commission to promulgate occupational health and safety standards and allow all federal standards to become part of the rules of the Industrial Commission. The reporting

Getting into the way out—OSHA defines an 'exit'

An exit: ". . . that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment as required in this subpart to provide a protected way of travel to the exit discharge."

An exit discharge: ". . . that portion of a means of egress between the termination of an exit and a public way."

A means of egress: ". . . a continuous and unobstructed way of exit travel from any point in a building or structure to a public way and consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, exits, escalators, horizontal exits, courts, and yards."

The state OSHA included state workers and featured an occupational health research plan that was never funded. Like federal OSHA it came under fire from both management and labor

of occupational injuries, illnesses and fatalities, which were previously reported to the Illinois Department of Labor were now to be reported to the Industrial Commission.

Conflict and compromise

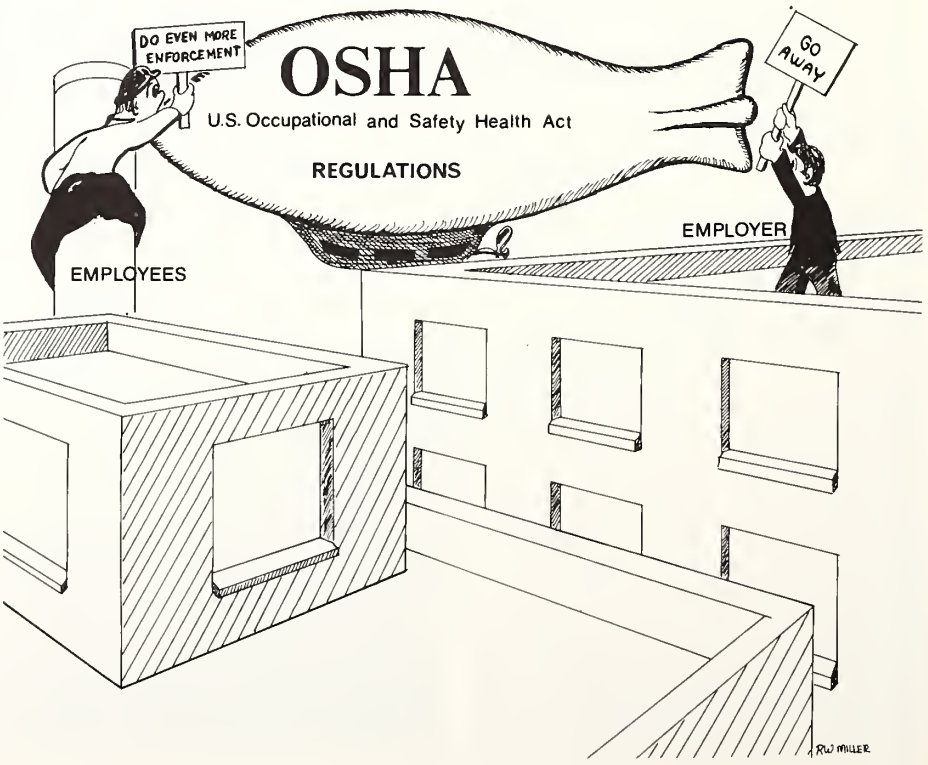
Writing the plan turned out to be almost as difficult as its implementation. The initial draft was written by the National Loss Control Corporation which brought a charge from organized labor that the plan favored business since it was written by a firm specializing in industrial relations. Robert Gibson, secretary-treasurer of the Illinois State Federation of Labor (AFL-CIO), said that from labor's viewpoint the plan was conceived in secrecy and signed by Gov. Dan Walker without any public hearings. Gibson said labor refused to attend the signing ceremony in Illinois because they didn't have a voice in formulating the plan. The predicament for the state AFL-CIO was that they wanted to participate in forming the Illinois plan if one was going to be passed, but at the same time had to take their cues from the national AFL-CIO which didn't want individual states to have plans. "We waffled for awhile," Gibson said.

But business wasn't entirely happy with the state plan either. Leonard Day of the Illinois State Chamber of Commerce noted that although various segments of business, industry and labor were included on the governor's committee which was writing the Illinois OSHA plan, employers seemed to be standing alone. Day said the final plan was a compromise among the various interests.

The Illinois OSHA plan was finally submitted to the regional OSHA office on November 30, 1972. Final approval came a year later on November 1, 1973 when Illinois became the twentieth state to have a state OSHA plan approved by the federal OSHA. The plan was to become effective immediately for a three-year test period. If at the end of the three-year period OSHA was satisfied that Illinois' enforcement of the OSHA standards was as effective as the federal government's, then OSHA would withdraw and leave enforcement of OSHA standards almost entirely up to the state. Finally, in November 1973 the Industrial Commission rescinded all of its previous state occupational health and safety standards and substituted OSHA standards.

Under the plan the Illinois Department of Labor had the lion's share of the responsibility for enforcement. The department was to train and employ the inspectors who would conduct the inspections and issue citations. The Industrial Commission was to review the contested citations, assign penalties, and determine abatement periods. The Commission also had the authority to promulgate new standards. The federal OSHA inspectors could still make inspections, and theoretically an employer could be visited on the same day by a state inspector and a federal inspector. But most inspections were conducted jointly by federal/state teams, and once the trial period was over, these joint inspections would cease.

The funding of the plan was to be divided evenly between the state and the federal government. Initially, 120 inspectors were budgeted by the Illinois Department of Labor with plans of assigning 137 safety compliance officers and 20 industrial hygienists. Most inspectors had been with the department prior to OSHA, and while this point was initially accepted by the federal OSHA, the state plan was not fully accepted once it had been implemented. Federal OSHA was critical of the fact that most state inspectors were not well trained, many of them having only high school educations. Federal OSHA seemed pleased by the quantity of inspections but was critical of the quality. It conducted two one-on-one audits of the state's program, one in



May 1974 and the other in November 1974. The federal report noted many violations state inspectors had missed.

Day of the Chamber of Commerce also notes employers were unhappy over the state plan because "regulations by the state turned out to be more strict than the federal regulations." Indeed, the Industrial Commission elected to include state and local government employees where the federal OSHA act had not included them. The state did exclude coal mining and farming, however.

Ironically it was lack of funding and not the critical reviews by the federal OSHA reports that led to the demise of the Illinois OSHA program, according to Melvin L. Rosenbloom, former chairman of the Industrial Commission. Rosenbloom said that Illinois wanted to fit its program more along the lines of occupational health regulation rather than merely establishing health regulations as the federal OSHA has done. Rosenbloom explained that the state was in the process of designing a data gathering plan that would involve the University of Illinois Medical School and the Illinois Institute for Environmental Quality as research assistants.

No funds

However, the General Assembly turned down in 1973 a budget request to fund this elaborate data system. "We would have needed five or ten times more funds than we were appropriated to fund our plan as we had envisioned it," Rosenbloom said.

The federal reports were particularly critical of the state's hiring practices of its inspectors and found Illinois ". . . failed to hire and promote in accordance with the procedures mandated by the [state] Plan." The federal report also seemed critical of the fact that the state plan received considerable negative publicity and reaction. It noted upon release of the First Semi-Annual Report on the Illinois plan, that Chicago newspapers "presented articles summarizing federal findings with a conspicuous general emphasis on negative aspects," and the withdrawal of the state from the OSHA program was announced ". . . in the preemptory and vociferous fashion to which observers of the Illinois program had become accustomed." It should be pointed out, however, that the federal report also noted the state had made many improvements in its inspection program since the first federal report was conducted.

Rosenbloom acknowledged that the Illinois OSHA program had some serious deficiencies. He explained that it was difficult to attract high caliber persons for inspector positions when pay scales were only $8,000 to $9,000 a year to start, with some inspectors only making a maximum $12,000 yearly.

He added that he felt the federal OSHA and the Illinois General Assembly would have prevented the state OSHA program from developing new health standards. "Congress and OSHA were sensitive about complaints of varying standards from state to state," Rosenbloom said. Rosenbloom is likewise critical of the federal OSHA approach of concentrating on health regulations rather than occupational health research in promulgating standards. "They seem to have done everything wrong," he said. "We thought they were wrong in the first place. Inspections should have been more selective. They started out on an adversary basis."

And so on March 21, 1975, Gov. Daniel Walker notified the federal secretary of labor of Illinois' intention to withdraw from the OSHA program effective June 30, 1975. Although it was agreed that Illinois could operate a safety and health program covering the public sector after that date, the General Assembly did not appropriate the funds and the program was never implemented. Rosenbloom said the state decided it just didn't want to run a duplicate federal program and since the legislature would not fund the state's proposed data collection and research program, Illinois opted out of the program. Illinois was not alone in dropping out of the program. Many other states also dropped out after finding that federal OSHA was not willing to be as flexible in its supervision of state OSHA plans as many states had anticipated.

When the state pulled out of the OSHA program, federal OSHA was forced to take over the entire enforcement procedure. Today the federal OSHA has some 98 compliance officers assigned to Illinois. The ratio of safety officers to health inspectors is three to one. Plans are being made to add to this force in order to reach a ratio of one to one for health and safety inspectors. But criticism from both labor and business still persists. "OSHA should do more along the consulting line," said Day, "to help an employer make a work site safer. As it is now, OSHA doesn't say how to correct things when they issue a citation. An employer can get his fair day in court through the appeal process, but it takes time and he needs to know how to correct violations," he added.

Labor and management

On the other hand, AFL-CIO Secretary-Treasurer Gibson said the health and safety program in Illinois has deteriorated after the state turned it back to the federal OSHA. "They can't maintain proper frequency of inspections and be as efficient," he said. Gibson added that from labor's viewpoint it doesn't make much difference who makes the inspections if the program isn't fully funded — which he contends is the case now. Gibson said labor believes the basic OSHA program and standards are good, but not enough money is being appropriated at both the state and federal level to adequately run the program.

Day notes that in its five year existence he has seen OSHA come a long way. "There are still some inspectors who go around with tape measures, but most inspectors are learning the rule of reasonableness," he said.□

By PHILIP KOLTUN

Can centralized record systems be both efficient and confidential?

Computers and privacy

Reprinted from Illinois Issues, November 1976

The Illinois General Assembly has yet to pass any major proposed bills concerning privacy of individuals for reasons including complexity of the issue and the lack of a hearty push by the public. Despite these odds proponents feel the prospects for passing major privacy legislation are good

PHILIP KOLTUN
Assistant professor of mathematical systems at Sangamon State University, he has degrees in computer science from the University of Illinois and Carnegie-Mellon University, and has lectured on computers and privacy, and legal issues in the computing field.

PRIVACY, the average person assumes, is guaranteed to all citizens by the U.S. Constitution. But, on April 21, 1976, the U.S. Supreme Court alarmed civil libertarians everywhere when it decided *United States* v. *Miller*, a case involving government subpoena of bank records pursuant to a criminal investigation. In so doing, the court stated that an individual has no legitimate expectation of privacy in dealings with his bank.

In times when automated record keeping systems collect and disseminate so much information about individual citizens, how far does the right to privacy extend? Does it apply to the computerized reservation systems of airlines and motels, where standard business information might be used to prove an individual's whereabouts at some given point in time? What rights to privacy does the individual have when using a telephone or a credit card, where routine accounting information could reveal much about someone's spending habits and associations? Or when seeking treatment at a hospital or mental health facility, or applying for welfare benefits?

Legislatures across the country have responded to the public's growing sensitivity to the sheer volume of accessible personal information by proposing privacy legislation, but states have jurisdiction only within the individual state. In Illinois, bills introduced in the 79th General Assembly included Senate Bill 1, the "Illinois Fair Information Practice Act," S.B. 960, the "Personal Records Privacy Act," and House Bill 125, the "Automated Personal Data Systems Safeguards Act." None passed.

With post-Watergate revelations of secret and improper surveillance activities by the Central Intelligence Agency, Federal Bureau of Investigation, Internal Revenue Service and Chicago Police Department "Red Squad," and a presidential campaign in which voters responded favorably to criticisms of burgeoning government bureaucracies, one would expect that privacy legislation would have a good chance for passage. Why, then, did none of the above bills get anywhere in the present General Assembly?

One reason, unquestionably, was the desire of concerned legislators to move cautiously on a problem of enormous complexity. According to Rep. Bruce R. Waddell (R., Dundee), chairman of the Data Information Systems Commission which is empowered to review and formulate policy for state data processing activities, "It's easy to make a statement like 'Everybody's privacy should be protected,' but then, getting down into specifics is more difficult." The General Assembly, says Waddell, will not respond as a matter of politically motivated expediency. Sen. Robert W. Mitchler (R., Aurora), sponsor of S.B. 1, agreed. "You have to go slow. Hasty legislation is bad."

Sen. Dawn Clark Netsch (D., Chicago), sponsor of S.B. 960, the privacy bill drafted by the Governor's Commission on Individual Liberty and Personal Privacy, indicated that the bill was "bottled up in the bureaucracy" and was introduced too late to get a good hearing. "There's no point in trying to move a major piece of legislation in such a restricted agenda session." The bill will be introduced again next year, however.

A second major reason for failing to pass major privacy legislation was a perception by legislators that the public was not insistent on the question. Rep. John E. Porter (R., Evanston), sponsor of H.B. 125, feels that the House committees were not ready to spend the time or make the commitment to deal with the privacy bills this year. Privacy just wasn't a priority issue. "The public didn't push for it enough," he

said. Mitchler echoed Porter's comment, "Do people really want it?"

David Hamlin, executive director of the Illinois chapter of the American Civil Liberties Union, agrees and disagrees with that perception. He feels that the public demand for privacy legislation is not sufficient to force legislative action. "But that day is not terribly far off," he says. "When the public perceives the need, they will demand legislation of more wide-reaching scope than is currently proposed. But for now, economic issues take priority."

Sen. Netsch feels that the prospects for passing major privacy legislation in the future are reasonably good. "This is the public's right to find out what government is doing to them." The interest she talks of cuts across political affiliations; conservatives and liberals could easily find themselves of one mind on the question. Hamlin agrees. "There is a demonstrated need in several areas. But it [the right to privacy] is the most elusive kind of issue, an intangible right. Finding the right kind of handle to persuade legislators is what's needed."

A third reason for the sluggishness in acting on privacy legislation is the desire of states to see what the Privacy Protection Study Commission, established by the federal Privacy Act of 1974, comes up with in the way of legislative recommendations. The commission has been actively holding hearings and is due to report its findings in March 1977. While some officials adopt a cautious stance in pushing privacy legislation, others, skeptical of the Study Commission's ability to influence constructive action, would like to see Illinois take a leadership role in protecting privacy. This has not yet occurred. A recent survey by the National Association of State Information Systems showed that only four states (Arkansas, Massachusetts, Minnesota, and Utah) had passed general privacy legislation by the end of 1975.

One way to gain a perspective on the privacy question is to consider the extent of the state's computerized record keeping systems. These systems are fundamental to planning, monitoring and evaluating state programs. While figures are hard to come by, the Data Information Systems Commission's annual report for 1975 reported that estimates of statewide data processing costs range from $60 million to $300 million annually. More than 30 different state agencies maintain data processing operations. The 1973 *Annual Report of the Data Information Systems Commission* and the *Illinois Master Plan Applying Computer Technology in the 1970's (IMPACT-70's)* provide an overview of record keeping activities in the state. Computer systems monitor air pollution, maintain criminal justice records, compile and collect health resource and medical statistics, log medical benefits payments, register resource and medical statistics, log medical benefits payments, register drivers' licenses and automobiles, match jobs and workers, and process tax returns, to name just a few functions.

In the social services area alone, the Departments of Vocational Rehabilitation, Public Health, Public Aid, Children and Family Services, and Mental Health operate record keeping systems. In response to concerns that the proliferation of individual systems was inefficient, plans were developed for a Total Health Information System to serve as "a central repository and supplier of information for comprehensive health planning, health research, health program operation and management, and health statistics."

In point of fact, the concerns of efficiency and privacy are often at odds. Pooling health records in a central repository may cut system overhead, but it also makes it hard to restrict access and dissemination of records to the purposes for which they were collected. However, when the federal Law Enforcement Assistance Administration (LEAA) issued security guidelines requiring the state criminal justice information systems it funded to operate on "decicated" computers, the uproar over the expense and inefficiency these guidelines would create caused LEAA to withdraw them. The lesson learned from that experience was that security standards could be mandated but not specific operating procedures.

One of the most serious record keeping abuses, and one which reveals the difficulty of drafting comprehensive privacy legislation, involves dissemination of arrest data without followup disposition data, or dissemination before that disposition data is available. The usefulness of disseminated arrest data to law enforcement agencies must be balanced against a presumption of innocence and the right to due process for the individual.

As Supreme Court Justice William O. Douglas noted in another context, "[I]n many cases the ultimate absolution never catches up with the accusation." Illinois participates in the FBI's National Crime Information Center (NCIC) network, and is one of eight states that fully participates in the Computerized Criminal History system as well. Illinois law (*Ill. Rev. Stat.*, ch. 38, sec. 206-5 (1973)) provides that unconvicted arrestees may petition a local court to have their arrest records expunged by the arresting authorities after acquittal. The catch is that there is no method for retrieving records which have been distributed to other law enforcement agencies, employers, or private individuals. Some authorities have acted to deal with the situation. In late 1973, then Gov. Francis W. Sargent of Massachusetts, believing NCIC safeguards to be inadequate to protect the privacy of his state's citizens, refused to let Massachusetts participate in the network. Under threat of Justice Department lawsuit to compel Massachusetts' participation, the state continued to refuse participation.

Likewise, the District of Columbia's "Duncan Ordinance" prohibits the metropolitan police department's practice of "routinely disseminating to FBI, whether *before conviction or after exoneration* or both, arrest records which included not only arrestee's fingerprints but also data identifying persons arrested and information concerning details and surrounding circumstances of arrests, at least as long as

Privacy legislation may have to deal with medical, insurance, law enforcement and financial records and government data banks one sector at a time

FBI continued to redisseminate that data *for other than law enforcement purposes* and particularly for purposes of employment and licensing" (*Utz* v. *Cullinane*, 520 F. 2d 467 (1975), emphasis in original).

Another privacy policy question, as difficult to resolve as the dissemination question, is that of expungement of criminal justice data. If a convicted criminal serves his sentence and "pays his debt to society," should the record of his conviction and sentence remain a public record, or should the slate be wiped clean, particularly when the stigma attached to conviction and the inevitable consequences of the evidence of a criminal record prevent the individual's return to full and useful membership in society? Law enforcement officials argue, justifiably, that records of an individual's criminal history are invaluable to the criminal justice system. They may be used, for instance, in investigating a crime involving a particular *modus operandi*, or in sentencing a repeat offender. How then are society's interests and the individual's balanced? One compromise that has been proposed involves "sealing" certain criminal justice records which are to be opened only under special conditions.

A variety of other very complex problems exist which privacy legislation needs to resolve. For instance, how long is the useful life of information? Legislation might require that "procedures be developed to insure the accuracy and timeliness of information." But how long is "timely" when the data involves mental illness, credit ratings, or a criminal history, and at what point should data be declared obsolete and expunged?

Other aspects of privacy proposals requiring considerable thought include proposed restrictions on use of universal identifiers such as the social security number, the cost of implementing privacy protection procedures, and the merits of a Privacy Board or ombudsman to review record keeping abuses. Already, provisions of the federal Privacy Act of 1974 (P.L. 93-579) forbidding any federal, state or local government agency to deny benefits provided by law to individuals refusing to disclose their social security numbers are having an effect on the design of new record keeping systems.

Of major concern to private industry, particularly companies engaged in interstate commerce, is the fear that compliance with the welter of privacy provisions of different states would be prohibitively expensive. The Association of Data Processing Service Organizations (ADAPSO) has indicated that it supports a policy of federal preemption of the entire area of privacy and security to insure uniformity of requirements. ADAPSO further indicated that its members could not tolerate restrictions on the interstate transfer of data because of the prohibitive expense in establishing data centers in each state.

Realistically, if important privacy legislation is to come, it may have to come one sector at a time. Specific legislation to deal with medical records, with insurance records, law enforcement records, financial institution records, and government data banks appears more feasible than one omnibus bill. The problems with designing a single set of standards appropriate for each sector seem too complex to conquer. However, the general principles embodied in most proposed legislation include the following:

- There should be no data bank whose very existence is secret.
- An individual requested to provide information should do so with his informed consent, knowledgeable of the authority used to collect the data, the use to which it will be put, and the penalties for refusing to comply.
- To the maximum extent possible, data on an individual should be collected from the individual himself.
- An individual should have the opportunity, with few exceptions, to see his own record, challenge the accuracy of statements about himself, and if necessary, provide his own version of the facts to be fully disseminated whenever the original version is.
- An organization creating and using a data bank must take steps to insure the confidentiality, accuracy, and timeliness of the information contained therein.

To an extent, Illinois' Constitution and statutes already reflect sensitivity to the issue of privacy. Article I, Section 6 of the state Constitution guarantees the people the right to be free from invasions of privacy. Article I, Section 12 states that "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation."

State law says that the director of the Department of Finance shall manage the operation of all data processing equipment used by state agencies "in a manner that provides for adequate security protection and back-up facilities for such equipment, the establishment of bonding requirements and a code of conduct for all electronic data processing personnel to insure the privacy of electronic data processing information as provided by law." (*Ill. Rev. Stat.*, ch. 127, sec. 35.3.)

Proponents of privacy legislation hope the procedures and principles of conduct they prescribe will guarantee the citizen's right to privacy. As Supreme Court Justice Felix Frankfurter stated, "The history of liberty has largely been the history of observance of procedural safeguards."□

Vetoes for privacy

GOV. DAN WALKER vetoed one bill and recommended changes in two others in order to protect the confidentiality of records. He vetoed House Bill 3138 which would have required state and private hospitals to disclose whether a person seeking a Firearm Owner's Identification Card had been a mental patient within the preceding five years.

Walker used his amendatory veto on Senate Bills 2010 and 2011 which deal with the confidentiality of financial records in banks and savings and loan associations. The governor recommended changes to define circumstances when courts could waive serving a subpoena on the customer, thus getting records directly from the financial institution. He recommended other provisions to protect the privacy of the customer's records.

The bills as passed do not define the circumstances of permissible disclosure with sufficient precision or narrowness, according to Walker, and may expand the areas of permissible disclosure beyond those customarily followed today.